

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804
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NATIONAL PRESCRIPTION :
OPIATE LITIGATION :
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CASE TRACK THREE : **VOLUME 17**
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October 27, 2021
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Heather K. Newman, RMR, CRR
United States District Court
801 West Superior Avenue
Court Reporters 7-189
Cleveland, Ohio 44113
216.357.7035.

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08:44:52 1 (On the record at 8:44 a.m.)

08:46:28 2 THE COURT: Okay. Everyone can be seated.

08:46:31 3 Mr. Lanier, how's your voice today?

08:46:33 4 MR. LANIER: Your Honor, I'm not ready to sing, but
08:46:36 5 I'm doing a lot better.

08:46:38 6 THE COURT: It's better than yesterday.

08:46:42 7 MR. LANIER: Much better. Thank you for your
08:46:44 8 indulgence yesterday when it was so tough.

08:46:47 9 THE COURT: Oh, okay. I've had that. It's not good.

08:46:56 10 All right. Giant Eagle filed an additional brief
08:47:01 11 regarding the admissibility of Ohio Board of Pharmacy
08:47:04 12 settlements. I read it carefully. This was right on the edge.
08:47:11 13 I've decided since employee theft has nothing to do with this
08:47:17 14 case I'm not going to let the plaintiffs go into it with
08:47:22 15 Mr. Chunderlik. However, Giant Eagle, you are -- you need to
08:47:30 16 be extraordinarily careful with any Giant Eagle witness you
08:47:34 17 call in your case, and if you elicit any testimony about the
08:47:37 18 Ohio Board of Pharmacy you've got to clearly limit it to Lake
08:47:43 19 and Trumbull County and diversion actions.

08:47:46 20 MS. SULLIVAN: Understood, Your Honor.

08:47:47 21 THE COURT: If it gets anywhere strayed from that, I'm
08:47:50 22 going to let the plaintiffs cross-examine that witness about
08:47:52 23 these actions against three pharmacies over the last 10 years
08:47:57 24 or so involving employee theft. So you have to be
08:48:01 25 extraordinarily careful. You're right on the edge.

08:48:06 1 MS. SULLIVAN: Understood, Your Honor.

08:48:06 2 THE COURT: Is that clear?

08:48:08 3 MS. SULLIVAN: Understood, Your Honor. Thank you.

08:48:10 4 THE COURT: Anything we do with exhibits on prior
08:48:15 5 witnesses? Start with April Caraway.

08:48:26 6 MR. LANIER: That's easy. Plaintiffs are only
08:48:27 7 offering one exhibit, P04568.

08:48:32 8 Any objection to that?

08:48:34 9 MS. FIEBIG: No objection, Your Honor.

08:48:35 10 THE COURT: All right. Are the defendant offering
08:48:37 11 anything with Ms. Caraway?

08:48:39 12 MS. FIEBIG: No, Your Honor.

08:48:41 13 MR. WEINBERGER: Can I interrupt your agenda for a
08:48:43 14 moment.

08:48:44 15 THE COURT: Yeah. Anything more on Caraway?

08:48:45 16 MR. WEINBERGER: No.

08:48:46 17 THE COURT: Okay. All right. Then I'll put aside the
08:48:48 18 exhibits.

08:48:48 19 MR. WEINBERGER: Your Honor, if we could -- if
08:48:54 20 Mr. Marcus, who represents Giant Eagle, and I could have a
08:48:57 21 moment with you in chambers. . .

08:49:01 22 THE COURT: All right. Yeah. Let me just -- all
08:49:10 23 right. I'll put aside these -- well, let me just finish with
08:49:15 24 these exhibits. The plaintiffs have handed me a page and a
08:49:19 25 half list of exhibits with Michelle Travassos.

08:49:23 1 Do the defendants have any objection to these, any of
08:49:26 2 the these?

08:49:26 3 MR. DELINSKY: We do have an objection to one,
08:49:29 4 Your Honor.

08:49:29 5 THE COURT: All right. One. We'll take up one, yes,
08:49:31 6 Mr. Delinsky.

08:49:32 7 MR. DELINSKY: P10245.

08:49:35 8 THE COURT: Hold it. Must be on the second page.

08:49:45 9 MR. WEINBERGER: What's the number, Eric?

08:49:46 10 THE COURT: Mr. Delinsky, I'm missing this. I don't
08:49:49 11 see -- I don't see that on their list.

08:49:51 12 MR. DELINSKY: Was 10245 not on your list, Pete? I
08:49:58 13 thought it was.

08:49:58 14 MR. LANIER: No, we objected to your objection.

08:50:01 15 THE COURT: Eric, I don't see it on their list.

08:50:04 16 MR. DELINSKY: Well, if it's not on their list, I have
08:50:07 17 nothing to object to.

08:50:08 18 THE COURT: Fair enough. Okay. So all these are in
08:50:11 19 without objection.

08:50:14 20 MR. DELINSKY: I apologize for the confusion.

08:50:16 21 THE COURT: No problem. Do you have any anything
08:50:18 22 you're offering with her?

08:50:20 23 MR. DELINSKY: No.

08:50:20 24 THE COURT: Okay. So that takes care of Caraway and
08:50:28 25 Travassos. Let me just --

08:50:34 1 MR. DELINSKY: Oh, Your Honor, I'm sorry, I was wrong.

08:50:37 2 THE COURT: Yes, you do have one. What?

08:50:39 3 MR. DELINSKY: I've new been wrong twice in the span

08:50:42 4 of 30 seconds. It won't be the last time. We are -- there are

08:50:45 5 three exhibits we are offering.

08:50:47 6 THE COURT: Okay. What are those CVS?

08:50:51 7 MR. DELINSKY: CVS MDL --

08:50:51 8 THE COURT: This is with Caraway?

08:50:52 9 MR. DELINSKY: No, I'm sorry, with Miss Travassos.

08:50:58 10 THE COURT: All right. Robert, did I just give you

08:50:58 11 that?

08:50:59 12 All right. Which ones for the defendant?

08:51:01 13 MR. DELINSKY: CVS MDL 00266.

08:51:08 14 THE COURT: All right. Why list them and I'll see if

08:51:10 15 there are any objections.

08:51:11 16 MR. DELINSKY: P08334.

08:51:17 17 THE COURT: Okay.

08:51:18 18 MR. DELINSKY: P15632.

08:51:20 19 THE COURT: Any objection to those?

08:51:23 20 MR. WEINBERGER: No objection, Your Honor.

08:51:23 21 THE COURT: Okay. All right.

08:51:26 22 All right. So it took care of two, so we still have

08:51:29 23 to deal with Ms. Polster, Vernazza, and Keyes. Okay.

08:51:34 24 All right. All right. Anything else anyone needed to

08:51:42 25 bring up, and then I'll meet with Mr. Weinberger.

08:51:45 1

Okay.

08:51:50 2

(Recess was taken at 8:51 a.m.)

08:54:40 3

(In open court at 8:54 a.m.)

09:08:08 4

THE COURT: Okay. Everyone can be seated.

09:08:42 5

All right. I've -- I feel I need to address something

09:08:49 6

that came up at the end of the questioning of the last witness,

09:08:56 7

Ms. Caraway. This was the sequence, two questions in a row:

09:09:04 8

And this is after Ms. Caraway recounted that she had heard from

09:09:14 9

African Americans that they felt when the heroin epidemic

09:09:19 10

started 20 -- 25 years ago no one really cared and it wasn't

09:09:24 11

until white people were affected that more attention was paid.

09:09:29 12

And so here is the question: And it wasn't until the

09:09:31 13

prescription pills became attractive to suburban white children

09:09:39 14

that more attention was paid; correct?

09:09:41 15

Answer: That's what I was told.

09:09:43 16

Then the follow-up question: And it was only at that

09:09:46 17

point that lawsuits like this were filed; right?

09:09:49 18

And she said, I don't know about that. There was an

09:09:53 19

immediate objection which I sustained.

09:09:54 20

All right. The question was 100 percent out of

09:10:00 21

bounds, and what I proposed to instruct the jury that the

09:10:08 22

parties agree that race has nothing to do with the plaintiffs'

09:10:12 23

claims or the defendants' defenses.

09:10:15 24

Does anyone have an objection to my just saying that?

09:10:18 25

I'm not going to tie it to anything, I'm just going to instruct

09:10:21 1 the jury on that.

09:10:22 2 MS. SULLIVAN: Your Honor, Giant Eagle would object to
09:10:23 3 that. It was Ms. Caraway that injected race into the case with
09:10:26 4 her testimony initially, and so we don't think that
09:10:29 5 instruction --

09:10:30 6 THE COURT: Ms. Sullivan, she did not inject race.
09:10:33 7 She recounted something. It was the question that you --
09:10:42 8 Ms. Fiebig tied with her question -- with her question tied
09:10:45 9 race to the filing of these lawsuits, all right, and that was a
09:10:50 10 hundred percent out of bounds, and I'm sure she didn't mean to
09:10:53 11 do it, but that's how it came out, okay, and it was wrong, a
09:10:56 12 hundred percent. And I feel, you know, you want to object,
09:11:01 13 fine. I really don't care.

09:11:02 14 How about the other defendant, do you object?

09:11:06 15 MR. DELINSKY: Your Honor. . .

09:11:15 16 THE COURT: And I'm not going to recount the testimony
09:11:17 17 or anything, I'm just going to make the statement.

09:11:19 18 MR. DELINSKY: No, Your Honor. What I'm concerned
09:11:21 19 about is the portion of the instruction that talks about what
09:11:26 20 the parties believe. It's a very complicated issue, and I
09:11:33 21 don't feel comfortable --

09:11:34 22 THE COURT: Fine. Does anyone object if I simply say,
09:11:36 23 I'm instructing you that race has nothing to do with the
09:11:39 24 plaintiffs' claims or the defendants' defenses?

09:11:44 25 Someone wants to object, I'd like to hear their

09:11:47 1 objection, put it on the record. You don't have to say what
09:11:50 2 the parties agree.

09:11:52 3 MR. STOFFELMAYR: As stated that way, not for
09:11:55 4 Walgreens.

09:11:58 5 MR. MAJORAS: Again, no objection to that language you
09:12:01 6 just read, Your Honor.

09:12:02 7 THE COURT: Thank you, Mr. Majoras.

09:12:03 8 Mr. Delinsky, any problem with that?

09:12:05 9 MR. DELINSKY: Your Honor, we don't intend to raise
09:12:07 10 race in the issue.

09:12:08 11 THE COURT: I know that.

09:12:09 12 MR. DELINSKY: But I do have a hitch about saying for
09:12:11 13 all time that it's not a -- not an issue. So on -- for that
09:12:17 14 reason, I object. Not that I intend to make it an issue, I
09:12:21 15 just don't know what it means to say that it has nothing to do
09:12:25 16 with it and not prepared to agree to that statement.

09:12:27 17 THE COURT: Well, okay.

09:12:30 18 MR. WEINBERGER: And, Your Honor, the concern that we
09:12:34 19 have is that the implication of the question was that the
09:12:40 20 plaintiffs were racially motivated in some way for the timing
09:12:46 21 of the filing of the lawsuit, and so removing the part that you
09:12:53 22 were going to say about the fact that the parties all agree
09:12:58 23 that race played no part in the filing of the lawsuit is
09:13:04 24 extremely important to us and to our clients.

09:13:10 25 MS. SULLIVAN: We just note --

09:13:11 1 MR. WEINBERGER: Because nothing could be further from
09:13:14 2 the truth of the matter.

09:13:16 3 MS. SULLIVAN: We just note, Your Honor, that wasn't
09:13:18 4 the import of the question.

09:13:20 5 THE COURT: Ms. Sullivan, the question was a hundred
09:13:22 6 percent out of bounds, and it was only at that point that
09:13:28 7 lawsuits like this were filed, right? There's no other way
09:13:31 8 anyone could take that.

09:13:32 9 MS. SULLIVAN: But Your Honor referred back to the
09:13:34 10 action plan that she testified about and then she went on to
09:13:37 11 say that we didn't do anything -- the witness injected it
09:13:43 12 originally, Your Honor.

09:13:43 13 THE COURT: Ms. Sullivan, the question -- the more you
09:13:43 14 speak, the more I'm going to say -- the more I'm going to say
09:13:46 15 to this jury, and I may have to focus on Giant Eagle. All
09:13:50 16 right? That's what you want me to do, leave the other
09:13:52 17 defendants out. That's what you want me to do, I'll give an
09:13:57 18 instruction on Giant Eagle alone, leave the other defendants
09:14:00 19 out.

09:14:01 20 MS. SULLIVAN: We believe that would be reversible
09:14:03 21 error, but you'll do what --

09:14:05 22 THE COURT: Not the way you're going because you're
09:14:07 23 objecting. You're the one who injected race into this case. I
09:14:10 24 didn't. The other defendants didn't.

09:14:22 25 MS. SULLIVAN: Understood, Your Honor.

09:14:31 1 MR. DELINSKY: Your Honor, I don't know mean to put
09:14:33 2 the Court cross wise with me, I just don't know where this case
09:14:38 3 could go. There's multiple potential phases depending on what
09:14:42 4 happens and I just -- without talking to my client, I'm just
09:14:44 5 worried about representing what our positions would be. We do
09:14:46 6 not intend to make it a --

09:14:51 7 THE COURT: Well, I'm going to say something, and if
09:14:53 8 the parties don't agree, I'll just say it. You can appeal if
09:14:55 9 you want. I'm trying to do this simply.

09:14:58 10 MR. LANIER: We think it's imperative that this jury
09:15:00 11 be instructed. There's no evidence --

09:15:03 12 THE COURT: Oh, I will -- I'll instruct them. But I
09:15:05 13 can't instruct them that the parties agree if the defendants
09:15:07 14 don't agree, so. . . I instruct them, it doesn't matter what
09:15:13 15 anyone agrees to. They've got to -- I mean, that's the law.

09:15:29 16 MR. DELINSKY: Your Honor, could we just have a minute
09:15:31 17 to confer?

09:15:32 18 THE COURT: All right.

09:15:33 19 MR. DELINSKY: Thank you.

09:16:02 20 (Counsel conferring).

09:17:31 21 THE COURT: Well, here's another thought. What if I
09:17:34 22 say the parties agree that race had nothing to do with the
09:17:38 23 filing of this lawsuit? Don't have to say anything about the
09:17:42 24 defendants' defenses because no one's raised it with the
09:17:46 25 defendants' defenses.

09:18:00 1 MR. STOFFELMAYR: I mean, speaking only for myself and
09:18:02 2 Walgreens, we would be much more comfortable with the language
09:18:04 3 you proposed a few minutes ago about what's relevant to the
09:18:08 4 claims and defenses. I don't want to take any position on what
09:18:16 5 motivated who, when, how. I can speculate on a lot of
09:18:18 6 things --

09:18:18 7 THE COURT: Well, if all the defendants agree to my
09:18:21 8 first statement, the parties agree that race has nothing to do
09:18:25 9 with the plaintiffs' claims or the defendants' defenses, I'll
09:18:27 10 go with that. It's a neutral -- it seems neutral, and it
09:18:27 11 seems --

09:18:31 12 (Simultaneous crosstalk).

09:18:31 13 MR. STOFFELMAYR: -- a second formulation where you
09:18:32 14 just instructed them that it has --

09:18:34 15 THE COURT: Well, I know, but the plaintiffs -- I
09:18:38 16 understand where the plaintiffs are coming from and the
09:18:40 17 attention was drawn as to the motivation for their lawsuit so
09:18:42 18 I'd rather -- either I've got to go specifically and simply say
09:18:46 19 the parties agree that race had nothing to do with the filing
09:18:50 20 of this lawsuit, or just a neutral, that the parties agree that
09:18:53 21 race has nothing to do with the plaintiffs' claims or the
09:18:56 22 defendants' defenses. I'd rather do that because I want them
09:18:59 23 to understand that race has zero to do with what they're
09:19:06 24 supposed to decide in this case.

09:19:08 25 MR. MAJORAS: Your Honor, John Majoras.

09:19:09 1 One of my concerns as we look forward, we have a
09:19:12 2 number of experts who talk about causation, breakdown, various
09:19:17 3 usages whether it's gender, economic groups, age, and at times
09:19:21 4 race, and to say a blanket -- it would call into question if
09:19:28 5 someone were to include some of that information in their
09:19:30 6 report that that's out of bounds that they were to do that.

09:19:35 7 So I'm concerned --

09:19:36 8 THE COURT: I don't think so. I mean, you're not
09:19:37 9 saying you're defending the case on race.

09:19:39 10 MR. MAJORAS: We're not, Your Honor.

09:19:41 11 THE COURT: If you want to say that certain groups
09:19:43 12 have been more adversely affected whether they're male or
09:19:46 13 female or young or old or black or white, I mean, that's not
09:19:50 14 your defense. If it's a fact based on the facts, it's the
09:19:54 15 facts.

09:19:54 16 MR. MAJORAS: I agree, Your Honor, which was why my
09:19:58 17 initial reaction to your second proposal was what it was, but I
09:20:02 18 want to make sure that I'm not going to run afoul if I were to
09:20:04 19 have an expert that talks about those issues.

09:20:06 20 THE COURT: An expert testifies that here's what the
09:20:08 21 numbers show, you know. . .

09:20:11 22 MR. WEINBERGER: Your Honor, let me suggest this as a
09:20:14 23 compromise, because it is -- this is extremely important. I've
09:20:22 24 just talked with Frank and he's been talking to the clients and
09:20:25 25 this is very critical to this -- where we are in this matter.

09:20:32 1 What about a statement from you, Your Honor, that
09:20:37 2 Giant Eagle did not mean to imply the following -- the filing
09:20:41 3 of this lawsuit was based on racial factors.

09:20:47 4 MS. SULLIVAN: We would object, Your Honor. Your
09:20:48 5 Honor, after consulting with Mr. Marcus your original proposal
09:20:51 6 is okay with Giant Eagle; that is, that race has nothing to do
09:20:54 7 with the plaintiffs' claims or the defendants' defenses -- the
09:20:59 8 parties' defenses.

09:20:59 9 MR. WEINBERGER: Nor would -- well, if we add nor
09:21:01 10 would the decision on whether or not -- nor with the decision
09:21:04 11 on when or whether to file this lawsuit.

09:21:08 12 THE COURT: I don't -- I mean, I'm not going to go
09:21:10 13 into those details. All right? I --

09:21:14 14 All right. All right. I can't give an instruction,
09:21:22 15 the parties agree that race has nothing to do with the
09:21:25 16 plaintiffs' claims or the defendants' defenses if any of the
09:21:28 17 defendants object.

09:21:29 18 So does any defendant object to my giving that
09:21:32 19 instruction?

09:21:36 20 MR. DELINSKY: Could you read it again, Your Honor,
09:21:38 21 please?

09:21:38 22 THE COURT: The parties agree that race has nothing to
09:21:41 23 do with the plaintiffs' claims or the defendants' defenses.

09:21:45 24 MS. SULLIVAN: Agreed for Giant Eagle, Your Honor.

09:21:52 25 MR. MAJORAS: Walmart agrees, Your Honor.

09:21:55 1 MR. STOFFELMAYR: Your Honor, Kaspar Stoffelmayr.
09:21:56 2 That's fine as you just raised it for Walgreens.

09:22:08 3 MR. DELINSKY: Your Honor, this is a real difficult
09:22:10 4 issue. We will agree so as to move past this issue, but I am
09:22:14 5 not remotely comfortable with that instruction.

09:22:18 6 THE COURT: I appreciate that.

09:22:18 7 MR. DELINSKY: Not that we intend to raise it, but I
09:22:21 8 am not comfortable.

09:22:22 9 THE COURT: Understood. Look, I very appreciate what
09:22:24 10 you're saying, Mr. Delinsky, and your accommodation, so that's
09:22:26 11 all --

09:22:28 12 MR. WEINBERGER: And we're comfortable with that on
09:22:30 13 behalf of the plaintiffs, Your Honor.

09:22:31 14 THE COURT: All right. Then that's all we'll do.

09:22:32 15 Okay. Then you can bring in the jury.

09:22:46 16 (Brief pause in proceedings).

09:24:27 17 (Jury returned to courtroom at 9:22 a.m.)

09:24:27 18 THE COURT: Okay. Please be seated, ladies and
09:24:29 19 gentlemen. Hope you had a good evening.

09:24:35 20 Before we start with the plaintiffs' next witness, I
09:24:38 21 want to instruct you that the parties agree that race has
09:24:42 22 nothing to do with the plaintiffs' claims or the defendants'
09:24:46 23 defenses.

09:24:48 24 Okay, Mr. Lanier, you may call your next witness.

09:24:51 25 MR. LANIER: Thank you, Your Honor.

—Fraser (Direct by Lanier)—

09:24:52 1 Ladies and gentlemen, I'm back. Not a hundred
09:24:58 2 percent, but good enough to where it may not be fingernails on
09:25:01 3 a chalkboard.

09:25:02 4 Your Honor, our next witness we would call is
09:25:07 5 Kim Fraser to the stand, please.

09:25:17 6 THE COURT: Good morning, Ms. Fraser. If you'd raise
09:25:22 7 your right hand, please.

09:25:22 8 Do you swear or affirm that the testimony you are
09:25:22 9 about to give will be truth, the whole truth, and nothing but
09:25:25 10 the truth, under pain and pennately of perjury.

09:25:25 11 THE WITNESS: Yes, I do.

09:25:27 12 THE COURT: Thank you. And you may remove your mask,
09:25:29 13 please, while testifying.

09:25:30 14 THE WITNESS: Thank you.

09:25:30 15 DIRECT EXAMINATION OF KIM FRASER

09:25:37 16 BY MR. LANIER:

09:25:37 17 Q. Good morning, Ms. Fraser.

09:25:41 18 A. Good morning.

09:25:42 19 Q. Will you tell the jury and the Court your name, put it on
09:25:46 20 the record, please, and tell them a little bit about you?

09:25:48 21 A. Sure. My name is Kim Fraser, I am the executive director
09:25:54 22 of the Lake County ADAHMS board. ADAHMS is an acronym. It
09:25:57 23 stands for alcohol, drug addiction, and mental health services.

09:26:10 24 Q. You are doing that for Lake County; is that right?

09:26:15 25 A. Yes. Yes.

—Fraser (Direct by Lanier)—

09:26:15 1 Q. So our Lake County road has got three stops in it today.
09:26:20 2 We're going to talk about you personally, we're going to talk a
09:26:24 3 little bit about your work history, and then we're going to
09:26:25 4 talk about the opioids in the county.
09:26:27 5 A. Okay. Very good.
09:26:28 6 Q. So personally, where did you grew up?
09:26:30 7 A. I actually grew up in Cuyahoga County, but I have been a
09:26:34 8 Lake County resident for over 20 years. My husband and I live
09:26:37 9 in Mentor with my daughter, who is 17, so we've raised her up
09:26:41 10 in Lake County. I've worked in Lake County for almost 30 years
09:26:48 11 in the behavioral health system, so Lake County is my roots,
09:26:53 12 it's my home.
09:26:53 13 Q. Your daughter came to court I know one day because I got to
09:26:57 14 meet her.
09:26:57 15 A. Yes.
09:26:58 16 Q. She's not here today to watch you testify?
09:27:00 17 A. She is not. She had -- she had to go to school today.
09:27:02 18 Q. All right. That's fair and important.
09:27:05 19 Now, you live in Lake County. You work in
09:27:11 20 Lake County, but tell us a little bit about growing up.
09:27:13 21 You graduated from high school where?
09:27:15 22 A. I graduated from Orange High School, and went on to college
09:27:22 23 at Syracuse University.
09:27:24 24 Q. Where Pete Weinberger went.
09:27:27 25 A. Yes. Yes.

—Fraser (Direct by Lanier)—

09:27:27 1 Q. But he's old enough to be your dad?

09:27:30 2 A. A fellow Orangeman, yes.

09:27:32 3 Q. And in that regard, you took an interesting degree. Tell
09:27:37 4 the jury about your degree.

09:27:38 5 A. Yes. I have a bachelor's in fine arts in theater, which my
09:27:43 6 father would have equated to a bachelor's in basket weaving,
09:27:48 7 which is about how far it got me.

09:27:50 8 Q. Yeah. Yeah. Did you see yourself in Broadway or L.A., the
09:28:01 9 movies?

09:28:01 10 A. Yeah. I was sort of the stereotypical Ohio girl to moved
09:28:05 11 out to L.A. to make it big, lived there for about a year and
09:28:09 12 realized I was not going to make it big in theater. So I moved
09:28:12 13 back home and went to school and pursued my master's.

09:28:15 14 Q. And what did you get your master's in?

09:28:17 15 A. I got my master's in counseling from John Carroll
09:28:20 16 University, and then I went on and got my post master's in
09:28:25 17 clinical counseling. So I am an LPCC, a licensed professional
09:28:31 18 clinical counselor.

09:28:31 19 Q. An LP -- oops, one "l" in counseling.

09:28:32 20 LPCC. Licensed professional clinical counselor?

09:28:35 21 A. That's correct.

09:28:36 22 Q. All right. Well, let's transition then into your work
09:28:38 23 history.

09:28:39 24 Did you ever work as a professional counselor?

09:28:42 25 A. I did. Actually, I have -- almost my whole career has been

—Fraser (Direct by Lanier)—

09:28:46 1 in Lake County, so I started out at one of the provider
09:28:50 2 organizations that our ADAHMS board now funds, so I was boots
09:28:54 3 on the ground. I was a crisis counselor, which meant I worked
09:28:58 4 with individuals who had mental illness or substance use
09:29:03 5 disorders. I worked with them when they were in sort of their
09:29:05 6 most acute state, when they were in a crisis situation.

09:29:10 7 I worked mostly with folks in their homes, because
09:29:12 8 when somebody's in crisis, they're not necessarily going to
09:29:15 9 come into a mental health agency and look for help. So I would
09:29:19 10 go into their homes, I would work with these individuals, work
09:29:22 11 with their families. Our goal was always to help keep them out
09:29:27 12 of the hospital, help stabilize them in the community and help
09:29:30 13 them kind of get back on their feet.

09:29:34 14 And I did that for about 5 years. And then I moved
09:29:38 15 into a management position within that same agency where I
09:29:42 16 actually ran our housing services. So I ran our 24/7
09:29:48 17 residential treatment facility. So sometimes that meant
09:29:51 18 working the overnight shift and being in the home with
09:29:55 19 individuals who were in need of our services, kind of round the
09:30:01 20 clock, and I also ran our homeless outreach program.

09:30:04 21 So that involved a lot of finding individuals who were
09:30:08 22 not connected to our system but who maybe because of their
09:30:12 23 mental illness or their substance use disorder found themselves
09:30:17 24 homeless in our community. So we would literally go out and
09:30:21 25 talk to people on the streets, talk to folks who unfortunately

—Fraser (Direct by Lanier)—

09:30:24 1 were living maybe under the bridges who were really suffering
09:30:29 2 and try and help connect them with services, because, again,
09:30:33 3 not everyone who has a mental illness or substance use disorder
09:30:38 4 is willing to stand up and say, yeah, I need help. We really
09:30:42 5 needed to meet folks where they were at.

09:30:44 6 Q. Okay. I'm going to ask you a question -- by the way, you
09:30:48 7 and I have spoken twice before about your testimony.

09:30:51 8 Is that fair?

09:30:51 9 A. That's correct.

09:30:52 10 Q. I mean, we've spoken a lot in court of how are you, is this
09:30:55 11 your daughter, that kind of stuff. But I met with you a number
09:30:58 12 of months back.

09:30:59 13 A. Yes.

09:31:00 14 Q. And talked to you for about 45 minutes one day. And I
09:31:06 15 don't remember if we were in Lake or Trumbull at the time.

09:31:08 16 Do you remember where we were?

09:31:09 17 A. We were in Trumbull, yes.

09:31:10 18 Q. Okay. And then I met with you a couple of nights ago just
09:31:14 19 to remind you to come on, tell you about the road map, tell you
09:31:18 20 to tell the truth, and here you are.

09:31:20 21 A. Yes.

09:31:20 22 Q. Okay? So I've never asked you this before, but I'm really
09:31:25 23 curious hearing your experience. Many of us, at least in
09:31:31 24 Houston, we see people under the bridge, we see people with
09:31:35 25 signs at intersections?

—Fraser (Direct by Lanier)—

09:31:36 1 MR. DELINSKY: Objection, Your Honor.

09:31:38 2 MR. LANIER: Well, this is a good question, Judge. If
09:31:40 3 I could try it.

09:31:41 4 MR. DELINSKY: You're testifying, Mark.

09:31:43 5 MR. LANIER: No, no, no, I'm not. Trust me.

09:31:46 6 I'll start all over, brand new.

09:31:48 7 THE COURT: All right.

09:31:48 8 BY MR. LANIER:

09:31:49 9 Q. Question: Do you think when you see people with those
09:31:51 10 signs, give me money for food, God bless, or something like
09:31:54 11 that, what do you teach people about whether or not to give
09:31:57 12 them money or whether or not to help them?

09:31:59 13 What do you do?

09:32:01 14 A. You know, that's a good question, and there's not --
09:32:04 15 there's not a black-and-white answer to that. The fact is is
09:32:11 16 that nobody ever woke up one day and said, boy, I think I
09:32:15 17 really want to become a drug addict today. It's never
09:32:18 18 happened. So people who find themselves in that situation,
09:32:27 19 maybe they're going to use the money for good purposes, maybe
09:32:31 20 they're going to use the money to continue to support the
09:32:33 21 addiction that is a brain disease that is driving them.

09:32:38 22 I think being able to connect those individuals with
09:32:41 23 services, being able to connect with the supports that they
09:32:46 24 need to turn their lives around, offering support as much as
09:32:51 25 offering \$5, the support is what they need. No -- nobody wants

—Fraser (Direct by Lanier)—

09:32:57 1 to be in that situation. Nobody wants to be homeless. Nobody
09:33:01 2 wants to be living with an addiction, but there's so much shame
09:33:08 3 and so much stigma that's attached to it that I think, in my
09:33:12 4 view, and why I got into this field is I think we have a
09:33:14 5 responsibility to help the people around us, to lift them up
09:33:19 6 and to help them find that quality of life so that they can
09:33:25 7 change, so that they can improve the life that they're living.
09:33:29 8 Q. Ms. Fraser, is that some of what you were doing with your
09:33:33 9 homeless outreach program?
09:33:36 10 A. It you absolutely it is. It was about breaking down
09:33:40 11 stigmas, breaking down barriers, breaking down the shame that
09:33:44 12 is so often involved for people who have substance use
09:33:48 13 disorder, and that's -- that's been a huge piece of what we've
09:33:52 14 seen even in this opiate epidemic is that when individuals
09:33:57 15 start on a prescription and they think, I'm not doing anything
09:34:01 16 wrong, this came in a little prescription bottle, this must be
09:34:04 17 safe and then that leads into addiction which leads into
09:34:10 18 families being torn apart, children being pulled away from
09:34:13 19 their parents, people losing their jobs, people losing their
09:34:18 20 homes. There's so much shame and stigma that's attached to
09:34:22 21 that and so helping to break that down and helping to identify
09:34:28 22 that these are individuals that, you know, were it not for that
09:34:34 23 first step, that first prescription, that first little orange
09:34:37 24 bottle, they wouldn't have -- have experienced the trauma that
09:34:44 25 is just impacting so many people in our community.

—Fraser (Direct by Lanier)—

09:34:50 1 Q. Okay.

09:34:51 2 MR. DELINSKY: Your Honor, may we go on the headset,
09:34:53 3 please?

09:34:55 4 (Proceedings at sidebar.)

09:35:07 5 MR. DELINSKY: Your Honor, that last answer in it's
09:35:10 6 entirety was based on hearsay. It also reflected opinion
09:35:14 7 testimony that addiction results from that first bottle. She
09:35:23 8 has not been designated as an expert and lay opinion requires
09:35:27 9 personal knowledge. She doesn't have that. This is -- these
09:35:30 10 are -- if -- these are stories being relayed to you, but that
09:35:34 11 was way out of bounds, Your Honor. It was all hearsay based,
09:35:37 12 and it was an expert opinion that has not been discussed.

09:35:40 13 MR. LANIER: And, Your Honor, my reply is A, it was
09:35:42 14 not hearsay based. This is her work experience. This is what
09:35:45 15 she's done.

09:35:48 16 B, it explains the stigma point that she was trying to
09:35:51 17 make, that this is a stigma issue because people feel this
09:35:56 18 responsibility.

09:35:57 19 C, it is certainly within the realm of her experience
09:36:01 20 to be able to testify to these things. This is why she gave a
09:36:07 21 deposition. This is why she's here.

09:36:09 22 THE COURT: Well. . . the problem is, Mr. Lanier, that
09:36:15 23 some of that answer was proper and some wasn't. She's
09:36:25 24 certainly competent and qualified from her experience to talk
09:36:27 25 about the shame and stigma of addiction and what her county,

—Fraser (Direct by Lanier)—

09:36:33 1 Lake County, has had to do to try and help and support these
09:36:36 2 people. I assume that's why she's here.

09:36:39 3 MR. LANIER: Right.

09:36:40 4 THE COURT: She's not qualified to talk about
09:36:43 5 causation.

09:36:45 6 MR. LANIER: Understood.

09:36:45 7 THE COURT: And -- and Mr. Delinsky is correct that
09:36:49 8 some of that answer included that, that whole sequence about
09:36:56 9 starting with the pill, they thought they did nothing wrong,
09:36:59 10 they got it from a doctor and it led to their lives are ruined.

09:37:03 11 Now, that certainly happened with some people, but she
09:37:10 12 has no idea how most of the people got addicted and many became
09:37:16 13 addicted in some other way, and the point is she's not here to
09:37:18 14 give that testimony. So I'm not sure what to do about it at
09:37:23 15 this point in time.

09:37:23 16 MR. LANIER: Your Honor, I will tell you that I will
09:37:24 17 try to ask more focused questions and try to stop her from
09:37:31 18 doing that.

09:37:31 19 THE COURT: Well, I think your -- maybe she's got
09:37:46 20 to -- I don't know.

09:37:47 21 Mr. Delinsky, I can, you know, instruct the jury to
09:37:49 22 disregard that last answer and Mr. Lanier can start again.

09:37:55 23 MR. DELINSKY: That's -- we would -- we would make
09:37:58 24 that request, Your Honor.

09:38:00 25 MR. MAJORAS: Walmart joins, Your Honor.

—Fraser (Direct by Lanier)—

09:38:01 1 THE COURT: All right. Then that's what I'll do.

09:38:01 2 (In open court at 9:38 a.m.)

09:38:07 3 THE COURT: All right. The jury's instructed -- I'm
09:38:09 4 instructing you to disregard entirely Ms. Fraser's last answer.

09:38:17 5 BY MR. LANIER:

09:38:17 6 Q. Ms. Fraser, I'm going to ask you some more questions, but
09:38:27 7 as you answer them we've got to be real careful not to -- not
09:38:31 8 to say something that someone else has said to you as to how
09:38:34 9 things have occurred, just your perception of things from your
09:38:39 10 experience.

09:38:40 11 Does that make sense?

09:38:41 12 A. I understand.

09:38:42 13 Q. And I'll do a better job at trying to make sure the
09:38:46 14 questions are asked in a way because I -- you're not a lawyer
09:38:49 15 and you're not supposed to be, so don't worry about it.

09:38:52 16 All right?

09:38:52 17 A. I understand.

09:38:52 18 Q. All right. I want to go back to the question I asked you.

09:39:00 19 Your homeless outreach program you had, was that
09:39:03 20 something to try and help with homeless people that we see on
09:39:06 21 the streets and under bridges?

09:39:09 22 A. Absolutely. We have homeless individuals in Lake County.

09:39:13 23 Q. And how long did you work -- let's put some timing into
09:39:17 24 this. When were you a crisis counselor working in homes?

09:39:21 25 A. That was 1993 /'94 is when I started.

—Fraser (Direct by Lanier)—

09:39:34 1 Q. And when did you take on the management position on the
09:39:37 2 housing and homeless outreach program?

09:39:40 3 A. I think 1996/'97.

09:39:50 4 Q. Walk us through your work history after that, please.

09:39:52 5 A. So I remained with the organization until 1999. So I was,
09:39:56 6 again, boots on the ground through '99, and then a position
09:40:01 7 became open at the ADAHMS board. The ADAHMS board oversees the
09:40:08 8 behavioral health agencies, the behavioral health network in
09:40:12 9 the county. Right now, we fund -- we investigate in 15
09:40:17 10 agencies throughout Lake County, so --

09:40:20 11 Q. And again, just so the record's clear --

09:40:22 12 A. Yes.

09:40:22 13 Q. ADAHMS is that alcohol, drug addiction, mental health
09:40:26 14 board?

09:40:26 15 A. Exactly. Exactly. There are 50 ADAHMS boards around the
09:40:31 16 state. Not everyone has the same name. So some are referred
09:40:35 17 to as a mental health and recovery board, some are referred to
09:40:38 18 as an ADM board, but essentially we have the same
09:40:41 19 responsibility, which is to plan, fund, monitor, and evaluate
09:40:44 20 our county's mental health and addiction recovery system.

09:40:50 21 So we're sort of that behavioral health safety net.
09:40:55 22 Our job is to make sure any person in our county, regardless of
09:40:58 23 age, regardless of gender, regardless of ability to pay, has
09:41:03 24 access to the best mental health and addiction recovery
09:41:07 25 services when and where they want to receive those. And we

—Fraser (Direct by Lanier)—

09:41:12 1 offer some support services through the board, but the clinical
09:41:16 2 services are offered through this network of provider agencies.
09:41:19 3 So I had worked at one of the providers. I moved into the
09:41:23 4 position of director of quality improvement at the ADAHMS board
09:41:27 5 in 1999.

09:41:29 6 Q. And as the director of quality improvement, what were your
09:41:33 7 hands-on tasks then? What were you doing day-to-day?

09:41:37 8 A. So I worked with the provider organizations to look at the
09:41:45 9 clinical standards and the quality standards for the services
09:41:49 10 that were offered through those agencies. So things like
09:41:52 11 client rights, making sure that client's rights were being
09:41:55 12 adhered to. Make sure that services met evidence-based
09:42:01 13 practices, so they met clinical standards and quality standards
09:42:06 14 that were established. Making sure we were delivering the best
09:42:08 15 services possible. I helped to develop new programs.

09:42:12 16 So if we saw a gap in services, part of my job was to
09:42:17 17 bring recommendation to the board about what kind of new
09:42:22 18 services we might want to offer, and it was really to partner
09:42:24 19 with the agencies so when there were challenges, when there
09:42:28 20 were problems, to help them problem solve those things.

09:42:32 21 Q. And did you progress in your work there beyond -- or next
09:42:38 22 to director of quality improvement?

09:42:40 23 A. Yes. In 2007, I became the executive director of the
09:42:44 24 organization. So that puts me in the position of really
09:42:50 25 leading our local behavioral health system.

—Fraser (Direct by Lanier)—

09:42:53 1 Q. And as the executive director, have you had hands-on
09:42:59 2 experience with how the county has been affected by the opioid
09:43:03 3 epidemic?

09:43:04 4 A. Absolutely. And enormous amount of my job in the last
09:43:11 5 decade has had to do with the impact of opioids on our
09:43:16 6 community.

09:43:18 7 Q. I would like to walk through that as we go to the next stop
09:43:22 8 and we consider the affect of opioids on the community.

09:43:25 9 And what I'd like to do is ask Ms. Fleming and
09:43:33 10 Ms. Lanier to please pass out plaintiffs' 4511.

09:44:04 11 BY MR. LANIER:

09:44:05 12 Q. And do you have Plaintiffs' 4511 in front of you?

09:44:09 13 A. Yes, I do.

09:44:09 14 Q. Will you sort of identify it -- first of all, do you
09:44:14 15 recognize this?

09:44:14 16 A. Yes, I do.

09:44:15 17 Q. This is some -- an e-mail of yours it looks like
09:44:20 18 originally; right?

09:44:20 19 A. Yes.

09:44:20 20 Q. And then you sent it to yourself; is that right?

09:44:26 21 A. Well, yes. I -- when I mail -- when I e-mail things out, I
09:44:33 22 blind cc the whole group so it looks like it's just from me to
09:44:36 23 me, but it's to the entire task force.

09:44:38 24 Q. Okay. So you had a bunch of blind copies of this and that
09:44:42 25 keeps other people from hitting a reply all and --

—Fraser (Direct by Lanier)—

09:44:46 1 A. Frankly, yeah, that's exactly what it does. Yeah.

09:44:49 2 Q. Okay. I got it. I got it.

09:44:51 3 I'd like to look at this document to make some sense
09:44:58 4 of what you have done, and as I do it we're going to be filling
09:45:01 5 in the opioid stop of your road map. All right?

09:45:04 6 A. Yes.

09:45:08 7 Q. Good afternoon, all. As the lead for the county H-U-B
09:45:13 8 program --

09:45:14 9 What's the HUB program?

09:45:15 10 A. So the county HUB program to combat opioid addiction. That
09:45:22 11 is actually part now of state statute. In, I believe, 2017,
09:45:31 12 the state legislature identified that each county needed a HUB,
09:45:42 13 like a central organization to make sure that services and
09:45:44 14 supports for individuals with opioid use disorder were provided
09:45:47 15 in the county. We were fortunate because we had already
09:45:52 16 created our Lake County opiate task force many years earlier.
09:45:57 17 We created that in 2010, so that essentially served as our
09:46:03 18 county HUB. But ADAHMS boards were given the responsibility
09:46:11 19 through the Ohio Revised Code, through statute, that we had to
09:46:12 20 have a HUB.

09:46:13 21 Q. So the county task force from 2010, was that an opiate
09:46:16 22 county task force?

09:46:17 23 A. Yes.

09:46:23 24 Q. Was the problem bad enough in 2010 to already need a task
09:46:27 25 force?

—Fraser (Direct by Lanier)—

09:46:28 1 A. Yes, it was. I believe Lake County was one of the first
09:46:32 2 counties in the state to establish a task force -- an opiate
09:46:37 3 task force, but yes, we were absolutely in 2010 seeing the
09:46:41 4 increase in demand or services and supports.

09:46:44 5 Q. All right.

09:46:45 6 A. Relative to opioids.

09:46:47 7 Q. If we go back to Plaintiffs' 4511. You said as the lead
09:46:51 8 for the county HUB program to combat opiate addiction. And
09:46:55 9 this, by the way, is in 2018?

09:46:58 10 A. Correct.

09:47:01 11 Q. The ADAHMS board is responsible for compiling a
09:47:07 12 comprehensive report detailing how our county is addressing the
09:47:12 13 opiate epidemic.

09:47:13 14 Can you tell us how you came about -- how your ADAHMS
09:47:16 15 board became responsible for compiling this comprehensive
09:47:20 16 report?

09:47:20 17 A. Well, again, through the state statute, the state said
09:47:24 18 every county must have a HUB for -- to combat opiate addiction.
09:47:30 19 The responsibility of that rested with the ADAMHS board, and
09:47:35 20 among the rules in that statute, the final rule was that every
09:47:40 21 board had to submit a comprehensive report by January 1st of
09:47:49 22 2020.

09:47:54 23 We proactively said let's do a baseline report now, in
09:47:58 24 2018, and then we'll do another one the following year to
09:48:02 25 see -- to measure how much more we've done in this progression.

—Fraser (Direct by Lanier)—

09:48:06 1 But again, the things that we put in this report we started
09:48:12 2 doing back in 2010. This was just sweeping it all into a pile.
09:48:18 3 Q. And that's one of the reasons I want to use this report.
09:48:23 4 The jury needs to hear and we've got to put on the record the
09:48:27 5 affects the epidemic had on the county, and that's what you're
09:48:30 6 here to do.

09:48:31 7 As I walk through this report will this be able to
09:48:34 8 give us a good feel of the opioid affect on your county?

09:48:38 9 A. Yes, it will. It is not all inclusive and the epidemic
09:48:42 10 continues, so there is more beyond what's even in this report
09:48:46 11 that we're doing today.

09:48:47 12 Q. After we go through the report, I'll ask you what is also
09:48:53 13 part of the problem either historically or now and let you
09:48:56 14 identify that as well.

09:48:56 15 A. Understood.

09:48:56 16 Q. You said this is lengthy, contains extensive information
09:48:58 17 about the multitude of ways we collaborate, innovate and
09:49:04 18 respond to community needs. Please take a moment to look
09:49:07 19 through it and feel free to share.

09:49:09 20 Is that right?

09:49:09 21 A. Yes.

09:49:09 22 Q. Now, I want to back up for a moment. You met your husband
09:49:16 23 through your job in a sense; is that right?

09:49:18 24 A. I did. I did.

09:49:20 25 Q. So tell the jury what your husband was doing when you met

—Fraser (Direct by Lanier)—

09:49:23 1 him.

09:49:25 2 A. So my husband worked outside of the behavioral health
09:49:29 3 system, but he had volunteered on the board of one of the
09:49:32 4 provider organizations within the ADAMHS network and he'd been
09:49:38 5 on the board for about probably a decade or longer and he was
09:49:43 6 currently --- when we met he was serving as the board chair for
09:49:47 7 one of the provider agencies, so our paths crossed because I
09:49:50 8 was the director of quality improvement, I was working with the
09:49:53 9 agency, he was the board chair, we met, and after our second
09:49:58 10 date he stepped down off the board because it was a conflict of
09:50:02 11 interest and -- and so he no longer serves on those boards.

09:50:06 12 Q. Wait. After the second date?

09:50:07 13 A. Yes.

09:50:07 14 Q. So he wasn't, like, sure enough after the first one?

09:50:09 15 A. No. The first date didn't -- didn't do the trick. The
09:50:13 16 second date, he stepped down.

09:50:14 17 Q. All right. All right. Second date arose to the level of a
09:50:19 18 conflict of interest.

09:50:20 19 A. Yes. Yes. Exactly.

09:50:22 20 Q. All right. Let's go through this, please. Because he's --
09:50:28 21 came to my mind because of what he did on the board.

09:50:31 22 What type of stakeholders are involved with this
09:50:36 23 county HUB program? Check all that apply.

09:50:41 24 And what I'd like to do is go through these and have
09:50:44 25 you give us a brief explanation of how the epidemic has

—Fraser (Direct by Lanier)—

09:50:50 1 affected your county such that these services are applied.

09:50:55 2 When you answer, don't tell us about anything that someone's
09:51:00 3 told you, please.

09:51:01 4 A. I understand.

09:51:01 5 Q. All right. Your perceptions are fine, but what others are
09:51:04 6 telling you is not.

09:51:05 7 A. Understand.

09:51:06 8 Q. Let's start with public Children's Services.

09:51:10 9 How has the epidemic affected your county such that
09:51:13 10 they're involved?

09:51:16 11 A. We have more children in foster care because their parents,
09:51:22 12 their caregivers have been impacted by opioids and are unable
09:51:28 13 to take care of their kids. We have nearly a hundred
09:51:31 14 grandparents raising their grandchildren because the family
09:51:37 15 member, because the parent is not able to care for their
09:51:40 16 children. We have more children today than ever in residential
09:51:45 17 treatment, which is paid for by Children's Services by the
09:51:50 18 ADAMHS board, by local levy dollars, because the children have
09:51:56 19 such acute symptoms as a result of their trauma that they're
09:52:02 20 pulled out of their homes and placed into residential
09:52:04 21 treatment.

09:52:06 22 We have programs specific to caring for babies who are
09:52:12 23 born in withdrawal because of the paternal opiate use disorder.
09:52:20 24 It's a huge, huge impact on our community because of what's
09:52:27 25 happening with these children and these babies.

—Fraser (Direct by Lanier)—

09:52:31 1 The Children's Services is working with schools,
09:52:35 2 behavioral health systems --

09:52:36 3 MR. DELINSKY: Your Honor -- Your Honor, I'm sorry to
09:52:38 4 interrupt, but could we go on the headset again?

09:52:44 5 (Proceedings at sidebar.)

09:52:57 6 MR. DELINSKY: I apologize for the interruption, but
09:52:58 7 there's no conceivable basis for this testimony other than
09:53:02 8 based on what people have told her.

09:53:04 9 THE COURT: Well, I disagree. This is her job. She's
09:53:07 10 funding this. She's providing the funds. So this is -- this
09:53:11 11 is -- she knows this from her work and she's a -- someone's got
09:53:15 12 to be able to testify about this. She hasn't -- this isn't
09:53:20 13 causation testimony as to how these people became addicted.
09:53:24 14 It's a fact they're addicted, their children need help. So, I
09:53:29 15 disagree. This is not --

09:53:31 16 MR. DELINSKY: Your Honor, we would just note that the
09:53:33 17 fact that she knows it through her work doesn't transform what
09:53:38 18 she's heard from other people into admissible testimony. She's
09:53:42 19 provided specific testimony about grandparents, specifically
09:53:45 20 symptoms being encountered by children.

09:53:48 21 THE COURT: This is a fact. There are a hundred --
09:53:50 22 the ADAMHS board is providing funding for, you know, a hundred
09:53:54 23 children who can't -- who are being cared for by their
09:53:58 24 grandparents.

09:53:59 25 MR. DELINSKY: But the testimony goes beyond that into

—Fraser (Direct by Lanier)—

09:54:01 1 the particular experience and symptoms that those children are
09:54:04 2 suffering which she can't possibly know. I have no objection
09:54:07 3 to the --

09:54:08 4 THE COURT: Well, it's not going into symptoms. All
09:54:10 5 right? The objection's overruled. This is proper testimony.

09:54:19 6 (In open court at 9:54 a.m.)

09:54:21 7 BY MR. LANIER:

09:54:21 8 Q. Ma'am, please continue. You were talking about how the
09:54:32 9 churn's services is working with schools. Explain, please.

09:54:35 10 A. The schools are requesting more --

09:54:39 11 Q. Don't say what they're asking. Just tell how they're
09:54:43 12 working with the schools.

09:54:44 13 A. Children's Services and the behavioral health system are
09:54:47 14 embedded in many of the schools to provide additional supports
09:54:51 15 to the educators, to the students because of the trauma
09:54:57 16 experienced as a result of the epidemic.

09:54:59 17 Q. Thank you very much.

09:55:00 18 What do the county commissioners have to do with all
09:55:04 19 of this? Why are they a stakeholder involved with the county
09:55:09 20 HUB program?

09:55:12 21 A. Clearly the commissioners oversee the operations of the
09:55:18 22 county. They also oversee the levies that are placed on the
09:55:25 23 ballot. The economic cost for the services that are delivered
09:55:34 24 for opioid use disorder.

09:55:36 25 Q. Are you able to tell me -- in Texas, we don't have levies.

—Fraser (Direct by Lanier)—

09:55:38 1 What is a levy? I mean, levy for us means you keep the water
09:55:42 2 from flowing out of the bayou.

09:55:45 3 A. Yeah. So levies are dollars that are assessed to property,
09:55:51 4 which is a fancy way of saying if I'm a property owner, part of
09:55:55 5 what I pay in taxes is money to support Social Services,
09:56:03 6 different services. So we're all asked every few years to
09:56:06 7 vote, and we can vote for a levy or against a levy.

09:56:12 8 The ADAMHS board has two levies on the ballot, each
09:56:17 9 goes 10 years, and they've been in existence since 1979 and
09:56:23 10 1986, so -- and they've continued to be renewed or replaced.
09:56:27 11 But those are based on your property value and based on that a
09:56:31 12 percentage -- a dollar amount goes towards supporting, in my
09:56:37 13 case, the ADAMHS board services.

09:56:38 14 Q. Got it. Thank you.

09:56:40 15 A. And the commissioners have to -- are responsible for
09:56:44 16 allowing those levies to go on the ballot. So that's a role
09:56:51 17 that they play.

09:56:56 18 Q. Explain how the county health departments are stakeholders
09:57:00 19 in working through this epidemic.

09:57:01 20 A. The biggest role that our local health department has in
09:57:05 21 Lake County is one, helping to keep statistics on the impact,
09:57:14 22 the death statistics. They head up our overdose death review
09:57:19 23 committee, which I sit on. So looking at that impact, the
09:57:24 24 people whose lives have been lost. Our county health
09:57:27 25 department also operates Project DAWN, which is the program

—Fraser (Direct by Lanier)—

09:57:32 1 that dispenses Narcan in our community. So another important
09:57:37 2 role in addressing consequences of the opioid epidemic.

09:57:45 3 Q. And the Department of Job and Family Services, why are they
09:57:50 4 a stakeholder in this opiate epidemic in Lake County?

09:57:54 5 A. In Lake County, the Department of Job and Family Services
09:57:58 6 is the umbrella under which Children's Services exists, so
09:58:03 7 they're part -- Children's Services is part of Job and Family
09:58:06 8 Services, but beyond that, Job and Family Services does things
09:58:09 9 like help people determine eligibility for Medicaid.

09:58:15 10 So if an individual needs those benefits in order to
09:58:21 11 receive services, they would apply through -- we all them JFS.
09:58:26 12 They also are the hub for our workforce initiative. So when
09:58:36 13 people are looking for employment, they can work with Job and
09:58:39 14 Family Services to seek employment, and we certainly know that
09:58:43 15 the opioid epidemic has had a tremendous impact on our
09:58:48 16 workforce.

09:58:48 17 Q. Okay. Law enforcement, can you explain that with the
09:59:04 18 epidemic?

09:59:04 19 A. Absolutely. Crime rates have increased in our county.
09:59:07 20 Theft, breaking and entering, crime associated with seeking
09:59:16 21 opioids, prescription opioids. So law enforcement needs to be
09:59:20 22 at the table and needs to help with the problem solving for a
09:59:27 23 how we address the epidemic.

09:59:29 24 MR. DELINSKY: Your Honor, headset for one more
09:59:31 25 second.

—Fraser (Direct by Lanier)—

09:59:32 1 (Proceedings at sidebar.)

09:59:44 2 MR. DELINSKY: Your Honor, I just need your help and
09:59:46 3 guidance here. Every a -- massive portions of this testimony
09:59:51 4 are, number one, outside the scope of the ADAMHS board, law
09:59:57 5 enforcement, for instance. Any information she would have
09:59:59 6 regarding crime associated with opioids would be coming from
10:00:03 7 police officers, the police department. It's not what
10:00:08 8 Ms. Fraser does.

10:00:08 9 There was testimony prior to that about how this has
10:00:14 10 impacted the workforce, which is -- obviously would turn on
10:00:20 11 information provided by employers, or employees of, you know,
10:00:25 12 in businesses throughout the county that she cannot possibly
10:00:27 13 have personal knowledge of. It's all hearsay. We object to it
10:00:31 14 all.

10:00:31 15 I don't want to continue interrupting, so the reason I
10:00:34 16 asked for the sidebar, I want to avoid these and just see if I
10:00:38 17 can have a running objection to the entirety of this testimony.

10:00:40 18 I don't know how else to do it to not be disruptive,
10:00:44 19 but also to preserve our objection for the Court of Appeals on
10:00:48 20 this testimony.

10:00:51 21 MR. LANIER: And, Your Honor, I don't object to him
10:00:53 22 having a running objection.

10:00:54 23 THE COURT: Yeah, well, but, Mr. Lanier, some of this
10:00:57 24 is -- it's not in here area of professional knowledge and
10:01:02 25 really is hearsay.

—Fraser (Direct by Lanier)—

10:01:03 1 MR. LANIER: Well, my concern, Your Honor, is this is
10:01:05 2 her document, she is in charge of this HUB, she pulled these
10:01:09 3 people together for this meeting.

10:01:12 4 THE COURT: I understand that, but --

10:01:13 5 MR. LANIER: And I want to be able to ask her why she
10:01:15 6 pulled them in for the meeting.

10:01:16 7 THE COURT: Well, if she wants to simply say that
10:01:23 8 there's been an impact on drug -- on the police, fine. Period.
10:01:27 9 I mean, but to go into these details, it is all hearsay.
10:01:34 10 When -- when -- dealing with mental health and counseling and
10:01:39 11 the things that the ADAMHS board directly provides funding, I
10:01:43 12 think she -- I'm allowing that, but, you know, her research
10:01:51 13 into talking to local businesses and what they told her,
10:01:54 14 that -- that really is hearsay.

10:01:56 15 MR. WEINBERGER: Your Honor, she's also on the opioid
10:01:59 16 task force for Lake County and -- which is a task force set up
10:02:08 17 to deal with issues of the abatement.

10:02:10 18 THE COURT: I understand that. If Mr. Lanier wants to
10:02:12 19 bring -- well, we're not dealing with details of abatement in
10:02:18 20 this case. It's simply liability. So if she wants to say that
10:02:23 21 she put together this report and it documents that there's been
10:02:26 22 an impact in these areas, you can bring that out. But to go
10:02:30 23 into the details, I agree with Mr. Delinsky, that -- that
10:02:33 24 really is hearsay, and it's not -- and it's not necessary to
10:02:39 25 establish liability. You can show the -- you know, there's

—Fraser (Direct by Lanier)—

10:02:42 1 been an impact in all these areas in Lake County, period.

10:02:45 2 That's all you need to show.

10:02:48 3 MR. LANIER: So if I'm hearing right, I should just
10:02:50 4 ask, has there been an impact in law enforcement? Yes. Has
10:02:55 5 there been an impact in -- and just walk through each one --

10:03:01 6 THE COURT: Right.

10:03:01 7 MR. LANIER: -- but not say what the impact is?

10:03:03 8 THE COURT: I think that's -- I think that's right.

10:03:04 9 MR. LANIER: And that should be adequate for an
10:03:06 10 appellate record on the scope of the epidemic?

10:03:09 11 I fear that that's not enough for my appellate record,
10:03:11 12 and I think that I should be entitled to ask her why did you
10:03:15 13 invite these people as a stakeholder? What were your reason as
10:03:19 14 the, you know, person who's not only the founding member of the
10:03:24 15 task force, but running it?

10:03:26 16 THE COURT: Well, but, and then she can say because I
10:03:28 17 believe that it had -- there was an impact in that area,
10:03:32 18 period. That's it.

10:03:33 19 But, you know, she can't go into all the details of
10:03:36 20 what they told her. That's not -- it's -- I don't -- it's not
10:03:41 21 relevant to establishing the existence. Again, you have to
10:03:46 22 establish the existence of a public nuisance today in
10:03:49 23 Lake County, all right, and you're establishing it. There's
10:03:53 24 been an impact on EMS fire, on drug courts, Department of
10:03:57 25 Corrections. I think that's fair. But to go into all the

—Fraser (Direct by Lanier)—

10:04:00 1 details of what people told her, I -- I don't think -- it's not
10:04:05 2 necessary, and it is all hearsay. And it would only be in to
10:04:10 3 show the proof of the matter asserted, which is hearsay.

10:04:13 4 MR. LANIER: Well, I understand, Your Honor, and, I
10:04:16 5 mean, here's the frustrating line I'm walking. I'm reminded of
10:04:22 6 an early trial in my life where the question, what is your name
10:04:25 7 was objected to as hearsay because the person was told what
10:04:29 8 their name was by their parent when they were growing up and
10:04:33 9 they never really knew what -- you know, hadn't seen their
10:04:35 10 birth certificate so it's hearsay.

10:04:37 11 I mean, at some point our life is informed by the
10:04:39 12 people we interact with and what we do, and I'm not asking for
10:04:43 13 hearsay per se, what I am asking her is why are these people
10:04:48 14 involved -- you know, you're every seeing this money that's
10:04:50 15 going out and these committees, what is it that's causing you
10:04:55 16 to push money in that direction or push money in that
10:04:58 17 direction, or how are they involved such that you need them at
10:05:02 18 the table? I -- I think that's okay, but I'll try to do it as
10:05:06 19 lightly as I can.

10:05:06 20 THE COURT: She can say because they've been impacted.
10:05:09 21 That's it.

10:05:09 22 MR. LANIER: Understood.

10:05:10 23 THE COURT: That's what you have to establish, that
10:05:12 24 they have been impacted.

10:05:14 25 MR. LANIER: Well, I'll ask --

—Fraser (Direct by Lanier)—

10:05:16 1 THE COURT: So I'm allowing that testimony. I don't
10:05:17 2 know if Mr. Delinsky would object to that, but if he does, I'll
10:05:21 3 overrule that objection.

10:05:22 4 MR. LANIER: All right. And, Your Honor, to some
10:05:24 5 degree I may have to ask some leading questions.

10:05:27 6 THE COURT: All right.

10:05:31 7 MR. DELINSKY: -- to do that. Okay.

10:05:32 8 THE COURT: All right. That's fine.

10:05:42 9 (In open court at 10:05 a.m.)

10:05:42 10 BY MR. LANIER:

10:05:42 11 Q. All right. Ms. Fraser, in addition to law enforcement,
10:05:47 12 have EMS and fire been affected by the opioid epidemic?

10:05:55 13 A. Yes.

10:05:56 14 Q. Time out. Without going into a lot of detail, why?

10:06:00 15 Are they the first responders many times to a lot of
10:06:04 16 circumstances and situations?

10:06:05 17 A. Yes, they are.

10:06:06 18 Q. Was it important to have them involved in the county HUB
10:06:10 19 program?

10:06:10 20 A. Absolutely.

10:06:12 21 Q. Okay. And do you interact with them routinely on these
10:06:15 22 issues?

10:06:16 23 A. Absolutely.

10:06:18 24 Q. The drug courts and probation services, are they also
10:06:23 25 affected by the opioid epidemic?

—Fraser (Direct by Lanier)—

10:06:26 1 A. Tremendously.

10:06:28 2 Q. Does it affect their workload?

10:06:30 3 A. Yes, it does.

10:06:30 4 Q. Does it affect what they have -- their time that they can
10:06:38 5 spend?

10:06:39 6 A. Yes, it does.

10:06:39 7 Q. Okay. The Department of Corrections, have they been
10:06:46 8 involved also in Lake County?

10:06:47 9 A. Yes, they have.

10:06:48 10 Q. And have they been affected by the opioid epidemic?

10:06:52 11 A. They have, yes.

10:06:57 12 Q. Does it affect the incarceration rate?

10:06:59 13 A. Yes, it does.

10:06:59 14 Q. Does it affect how they handle populations at prisons based
10:07:03 15 on your experience?

10:07:04 16 A. Yes, it does.

10:07:04 17 Q. Are there other government agencies that are not listed
10:07:06 18 here that have been affected by the opioid epidemic in
10:07:11 19 Lake County?

10:07:11 20 A. Yes, there are.

10:07:12 21 Q. Do any agencies come to mind?

10:07:23 22 A. I'm just going to review this to see who is listed and who
10:07:27 23 is not.

10:07:27 24 Q. Yeah. Take your time, please.

10:07:38 25 A. So our educational services center, for example.

—Fraser (Direct by Lanier)—

10:07:44 1 Q. They have been affected as well?

10:07:45 2 A. Yes, they have.

10:07:46 3 Q. All right. Anything else come to mind that we haven't
10:07:49 4 listed so far in terms of these governmental entities?

10:07:57 5 A. All of our court systems have been impacted, not just the
10:08:02 6 drug courts.

10:08:02 7 Q. Not just the drug courts.

10:08:04 8 Family courts have been impacted?

10:08:05 9 A. Yes.

10:08:06 10 Q. Okay. Criminal courts have been impacted?

10:08:10 11 A. Yes.

10:08:12 12 Q. And when the courts are impacted, are the court personnel
10:08:16 13 and the -- the amount of time and expense they have to spend on
10:08:22 14 matters, to your knowledge, has that been impacted?

10:08:24 15 A. Absolutely.

10:08:26 16 Q. Nonprofit agencies. Can you think of any nonprofit
10:08:30 17 agencies -- well, I guess we're going to look at a bunch of
10:08:34 18 them, so we'll come back to that if there are some that aren't
10:08:37 19 listed. Okay?

10:08:43 20 A. Yes, but of note is every provider agency with whom the
10:08:47 21 ADAMHS board contracts is a nonprofit agency.

10:08:48 22 Q. And when you say every provider agency, what do these
10:08:51 23 agencies provide, or better yet, what are the descriptions of
10:08:57 24 the agencies? How do we describe them, or give their name?

10:09:00 25 A. Our mental health and substance use disorder agencies.

—Fraser (Direct by Lanier)—

10:09:08 1 Q. Mental health and what?

10:09:09 2 A. And substance use disorder.

10:09:12 3 Q. And they're affected by the opioid epidemic in Lake County?

10:09:15 4 A. Yes, they are.

10:09:16 5 Q. Okay. Who -- who else?

10:09:18 6 A. Our housing agency.

10:09:22 7 Q. And they're affected because of the need for housing?

10:09:25 8 A. Absolutely.

10:09:26 9 Q. And who else?

10:09:27 10 A. Our youth mentoring agency.

10:09:36 11 Q. And they're trying to mentor, do they mentor youths who are

10:09:40 12 suffering from addiction or monitor youths who are affected by

10:09:44 13 familial addiction?

10:09:45 14 A. Both.

10:09:45 15 Q. Okay. Anybody else?

10:09:48 16 A. Our peer support agency.

10:09:50 17 Q. What is a peer support agency?

10:09:53 18 A. A peer support agency is an agency that is operated by an

10:10:02 19 individual with a mental illness or a substance use disorder

10:10:05 20 and it provides peer-to-peer services and supports for

10:10:10 21 individuals who are in recovery.

10:10:10 22 Q. Okay. Any other provider agencies?

10:10:16 23 A. Our information and referral agency in the county.

10:10:24 24 Q. What is an information and referral agency?

10:10:28 25 A. This is the agency that assists in linking individuals with

—Fraser (Direct by Lanier)—

10:10:35 1 services such as food assistance, heating bills being paid.

10:10:43 2 They're the home of our 211 information line.

10:10:47 3 Q. Okay. Any other nonprofit agencies, provider agencies
10:10:53 4 before we move on?

10:10:55 5 A. Those are the ones that come to mind.

10:10:57 6 Q. Thank you.

10:10:58 7 Now, on the healthcare organizations, can you give us
10:11:03 8 an idea of what healthcare organizations have been affected?

10:11:11 9 A. One is our local hospital system.

10:11:21 10 Q. Has it affected the expense associated with running that
10:11:25 11 hospital?

10:11:25 12 A. Yes, it has.

10:11:27 13 Q. The workload of that hospital?

10:11:29 14 A. Absolutely.

10:11:34 15 Q. The charitable care that has to be given by the hospital?

10:11:38 16 A. Absolutely.

10:11:39 17 Q. Okay. What about provider organizations?

10:11:44 18 A. Again, those are -- those are also our nonprofit agencies.
10:11:51 19 So those are organizations within the ADAMHS network.

10:11:54 20 Q. Okay. Pharmacies as stakeholders. I'm going to -- well,
10:12:08 21 why are they listed here?

10:12:10 22 A. One of the significant initiatives of our opiate task force
10:12:17 23 as outlined on our strategic plan was to establish permanent
10:12:23 24 drug drop boxes throughout our county and to distribute
10:12:29 25 information about those drop boxes so that citizens know where

—Fraser (Direct by Lanier)—

10:12:34 1 they could dispose of their medications.

10:12:38 2 Q. You mentioned -- or not you, Ms. Caraway yesterday
10:12:41 3 mentioned those bag -- what are they called?

10:12:45 4 A. Yes. They're actually right here still.

10:12:48 5 Q. Oh, yeah. I think those are ones you brought, and I pulled
10:12:51 6 them from you to use with Ms. Caraway to explain.

10:12:53 7 A. Yes.

10:12:53 8 Q. Can you tell the jury about those, please.

10:12:56 9 A. So this was sort of phase 2 of our initiative. We
10:13:00 10 established the permanent drop boxes, drug drop boxes in 2011
10:13:07 11 throughout the county, through police departments, including
10:13:10 12 our local community college, so -- and we would distribute
10:13:15 13 information, literature, everywhere we could to let folks know
10:13:21 14 where they could dispose of their medications. One of those
10:13:26 15 places was we had cards that we took to pharmacies, thus,
10:13:32 16 they're on that list.

10:13:34 17 But by 2017, these bags became available, which was a
10:13:40 18 safe alternative, particularly for individuals who were not
10:13:44 19 mobile, who could not leave their home to go to the drop boxes.
10:13:52 20 So we began distributing these. I take them to senior centers.
10:13:55 21 I take them to libraries. I take them to -- any -- anywhere I
10:14:03 22 can to get these out so that in -- folks can dispose of their
10:14:07 23 medications safely and get them out of the medicine cabinets.

10:14:11 24 Q. Okay. Very good.

10:14:12 25 Local businesses. How have you engaged local

—Fraser (Direct by Lanier)—

10:14:16 1 businesses in addressing the opioid epidemic or -- yeah.

10:14:21 2 A. A large part of our opiate task force is outreaching to the
10:14:27 3 community and presenting on the opiate epidemic and the impact
10:14:34 4 on our community.

10:14:35 5 Q. I'm going to interrupt there and ask my wonderful
10:14:40 6 compatriots to pass out Plaintiffs' Exhibit 4516.

10:15:08 7 Do you have 4516 in front of you?

10:15:10 8 A. Yes, I do.

10:15:11 9 Q. And are you familiar with this document?

10:15:14 10 MR. DELINSKY: Excuse me. We do object to displaying
10:15:17 11 this document.

10:15:17 12 THE COURT: Will someone give me a copy, please?

10:15:41 13 Robert, will you give me the white noise?

10:15:59 14 MR. LANIER: Sorry, Judge.

10:16:01 15 (Proceedings at sidebar.)

10:16:06 16 THE COURT: All right. There's an objection to this
10:16:09 17 document. And what is it, please?

10:16:11 18 MR. DELINSKY: Your Honor, the objection first and
10:16:13 19 foremost is hearsay with regard to the attachment. It is based
10:16:20 20 on information that is outside the scope of Ms. Fraser's
10:16:30 21 knowledge. By definition it speaks of national numbers. We
10:16:32 22 object to that as well. It talks about what American employers
10:16:37 23 are losing annually, again outside the scope of her knowledge.
10:16:41 24 So it's a combined 803, 402, and 403 exception.

10:16:44 25 THE COURT: Well, there -- what's jumping out at me on

—Fraser (Direct by Lanier)—

10:16:48 1 this flier, there's a statement, 4 to 5 heroin addictions began
10:16:52 2 with the use of prescription drugs, so that's hearsay and it's
10:16:58 3 potentially expert testimony and I -- I'm not going to allow
10:17:02 4 that in, and I don't see the general relevance. She's already
10:17:08 5 talked about the need to have a whole lot of social services to
10:17:11 6 help people in Lake County, so I'll sustain the objection.

10:17:14 7 MR. LANIER: Your Honor, may I offer as a salvo, if I
10:17:21 8 don't do the attachment I just do the exhibit to show that
10:17:24 9 they're out there making presentations to businesses? I mean,
10:17:29 10 that's -- to me, the relevance --

10:17:30 11 THE COURT: You can just ask her. She's already said
10:17:32 12 they make -- they do outreach to businesses. She's already
10:17:36 13 said that.

10:17:36 14 MR. LANIER: Okay.

10:17:39 15 THE COURT: In your outreach to businesses you're
10:17:43 16 making presentations.

10:17:44 17 MR. LANIER: Okay. Understood your ruling.

10:17:59 18 THE COURT: Maybe we'll just take our mid-morning
10:18:04 19 break at this point in time.

10:18:04 20 (In open court at 10:18 a.m.)

10:18:05 21 THE COURT: Ladies and gentlemen, we'll take 15
10:18:06 22 minutes, and then we'll -- usual admonitions and then we'll
10:18:09 23 pick up with the balance of Ms. Fraser.

10:18:13 24 (Jury excused from courtroom at 10:18 a.m.)

10:41:44 25 THE COURT: Okay. Please be seated.

—Fraser (Direct by Lanier)—

10:41:45 1 And, Ms. Fraser, I just want to remind you you're
10:41:48 2 still under oath from this morning.

10:41:50 3 And, Mr. Lanier, you may continue, please.

10:41:51 4 MR. LANIER: Thank you, Your Honor, may it please, the
10:41:54 5 Court, ladies and gentlemen, counsel, and Ms. Fraser.

10:41:57 6 BY MR. DELINSKY:

10:41:58 7 Q. Ms. Fraser, I'm trying to figure out how to condense down,
10:42:02 8 timewise your testimony. And so what I'd like to do is take
10:42:05 9 all of these different entities that you've testified about as
10:42:09 10 having been impacted by the opioid epidemic and ask you this
10:42:13 11 question: Have these impacts been incidental or have they been
10:42:16 12 significant?

10:42:16 13 A. The impacts --

10:42:23 14 MR. DELINSKY: Objection, Your Honor.

10:42:25 15 THE COURT: Yeah. Sustained.

10:42:29 16 BY MR. LANIER:

10:42:30 17 Q. Have these been notable impacts?

10:42:34 18 A. The impacts on our community have been significant.

10:42:39 19 Q. Okay. Thank you.

10:42:40 20 MR. DELINSKY: Objection, Your Honor.

10:42:41 21 THE COURT: Well, I'll sustain -- I'll sustain the
10:42:45 22 objection and the answer because that wasn't -- it wasn't an
10:42:47 23 answer to the question.

10:42:50 24 BY MR. LANIER:

10:42:51 25 Q. Have these been notable impacts?

—Fraser (Cross by Delinsky)—

10:42:59 1 A. Yes, they've been notable.

10:43:04 2 Q. All right. Ms. Fraser, your job involves opioid-related
10:43:15 3 issues. Can you give us an idea of how much of your time and
10:43:24 4 your efforts are suspended -- are encapsulated in dealing with
10:43:30 5 the opioid epidemic in Lake and -- Lake County?

10:43:34 6 A. Over the last decade I would say fully 75 percent of my job
10:43:41 7 has been related to the opiate epidemic.

10:43:44 8 Q. Great. Thank you very much.

10:43:46 9 Your Honor, I'll pass the witness.

10:43:49 10 THE COURT: Okay.

10:44:46 11 MR. DELINSKY: May it please the Court.

10:44:47 12 THE COURT: Yes, Mr. Delinsky.

10:44:47 13 CROSS-EXAMINATION OF KIM FRASER

10:44:49 14 BY MR. DELINSKY:

10:44:49 15 Q. Good morning, Ms. Fraser. Good morning, jurors. My name
10:44:51 16 is Eric Delinsky.

10:44:53 17 I think we shook hands one day earlier in the trial.
10:44:55 18 I represent CVS.

10:44:57 19 A. Good morning.

10:44:57 20 Q. Thanks for answering my questions this morning. It's nice
10:45:00 21 to see you without a mask.

10:45:02 22 A. Yes.

10:45:05 23 Q. Ms. Fraser, Mr. Lanier usually is careful to draw the
10:45:12 24 distinction between prescription opioids and illicit opioids.
10:45:17 25 I think it was probably just an oversight this morning, but am

—Fraser (Cross by Delinsky)—

10:45:24 1 I right when you refer to the opioid epidemic and the opioid
10:45:27 2 issues in Lake County that you're encapsulating both?

10:45:32 3 A. Yes, in that it has evolved.

10:45:35 4 Q. Okay. So when we talk about the opioid epidemic, simply as
10:45:41 5 a matter of the substances that are involved, it includes
10:45:45 6 prescription opioids; correct?

10:45:47 7 A. That's correct.

10:45:47 8 Q. Those are the opioids that are approved by the FDA,
10:45:52 9 prescribed by doctors, dispensed by pharmacies; correct?

10:45:56 10 A. That's correct.

10:45:56 11 Q. Okay. They also include unlawful opioids, like heroin;
10:46:06 12 correct?

10:46:06 13 A. That's correct.

10:46:06 14 Q. And fentanyl as well; correct?

10:46:08 15 A. That's correct.

10:46:09 16 Q. They include also the counterfeit pills we've heard about,
10:46:14 17 the counterfeit opioid pills; correct?

10:46:16 18 A. Yes.

10:46:16 19 Q. Okay. And focusing on just heroin for a moment, the heroin
10:46:28 20 part -- and I understand there's multiple parts -- but the
10:46:32 21 heroin part of the opioid crisis in Lake County, those date
10:46:39 22 back a long way as well; correct?

10:46:45 23 A. The epidemic as I observed it began with the prescriptions
10:46:53 24 and then progressed into illicit opioids.

10:47:01 25 Q. I -- I do understand your testimony on that, but my

—Fraser (Cross by Delinsky)—

10:47:08 1 understanding is that when -- from the documents coming out of
10:47:12 2 the opioid task force -- and let's take a step back and do a
10:47:15 3 hard stop there.

10:47:16 4 Lake County's opioid task force was formed in 2010;
10:47:21 5 correct?

10:47:21 6 A. That's correct.

10:47:22 7 Q. And when the task force was founded, it was looking at
10:47:32 8 certainly prescription opioid drugs; correct?

10:47:35 9 A. That's correct.

10:47:36 10 Q. But even back then it also was looking at the heroin
10:47:41 11 problem in the communities too; correct?

10:47:46 12 A. When we established the task force, initially we were
10:47:54 13 trying to figure out what exactly was impacting so
10:48:01 14 significantly our citizens, and as it evolved we realized the
10:48:11 15 crux of the issue was the prescriptions flooding our streets.

10:48:18 16 Q. I understand your testimony on that, but heroin was still
10:48:23 17 in the community and creating problems in 2010; correct?

10:48:27 18 A. Heroin was in the community creating a problem, but not to
10:48:32 19 the extent that the prescription opioids were.

10:48:35 20 Q. And heroin, I imagine you understand from your work in this
10:48:42 21 field for a long time in this community, heroin's been around a
10:48:48 22 long time; correct?

10:48:49 23 A. Yes, it has.

10:48:50 24 Q. Okay. I'd like to focus briefly on the ADAMHS board and
10:48:58 25 your work for it. And I'm very mindful of your testimony about

—Fraser (Cross by Delinsky)—

10:49:04 1 your perceptions of how things have progressed, okay, so just
10:49:09 2 putting that aside for a moment, the ADAMHS board, of course,
10:49:12 3 is focused on opioids; correct?

10:49:14 4 A. Correct.

10:49:15 5 Q. Prescription opioids; correct?

10:49:18 6 A. Correct.

10:49:20 7 Q. Heroin; correct?

10:49:21 8 A. Yes.

10:49:22 9 Q. And fentanyl; correct?

10:49:23 10 A. Yes.

10:49:24 11 Q. The counterfeit pressed opioid pills that are on the
10:49:29 12 illegal market; correct?

10:49:31 13 A. Yes.

10:49:31 14 Q. Okay. But in addition to that, the ADAMHS board also helps
10:49:35 15 patients or, to be more precise, guides providers who help
10:49:40 16 patients who are suffering from alcohol abuse; correct?

10:49:45 17 A. Yes, but to be clear, we -- we also work directly with, we
10:49:53 18 call them consumers, individuals who need and use our services,
10:49:56 19 in addition to funding those providers to provide those
10:49:59 20 clinical services.

10:50:00 21 Q. Fair enough, and I apologize for getting that wrong.
10:50:02 22 That's on me.

10:50:03 23 So -- but the ADAMHS board is helping with alcohol
10:50:09 24 problems; correct?

10:50:10 25 A. Absolutely.

—Fraser (Cross by Delinsky)—

10:50:11 1 Q. Methamphetamine abuse and addiction?

10:50:13 2 A. Yes.

10:50:14 3 Q. Correct?

10:50:15 4 Cocaine abuse and addiction as well?

10:50:18 5 A. Yes.

10:50:20 6 Q. And that includes crack cocaine as well; correct?

10:50:27 7 A. Yes.

10:50:28 8 Q. Okay. And at least as of -- I want to see if I can
10:50:38 9 remember the date -- December 2019, the ADAMHS board, your
10:50:43 10 agency, was reporting that in its -- both in its residential
10:50:51 11 facilities and in its outpatient facilities more than half of
10:51:01 12 the individuals it was helping and serving were suffering from
10:51:08 13 substance use or alcohol use disorders that were not opioids;
10:51:15 14 correct?

10:51:19 15 A. I don't have the exact data committed to -- I don't know if
10:51:22 16 there's a document that I can look at. . .

10:51:25 17 Q. Okay. Let me go get it. I let it at my table, so bear
10:51:31 18 with me for one moment.

10:51:44 19 Ms. Fraser, I'd ask you to look at CVS MDL 04963. I
10:51:54 20 believe it's in what lawyers call the Redweld.

10:52:04 21 A. I'm sorry, the number one more time?

10:52:05 22 Q. I know. They're awfully long. 04963.

10:52:12 23 A. Okay.

10:52:21 24 Q. Now, I believe Mr. Lanier asked you about a document that
10:52:25 25 looked like this; correct?

—Fraser (Cross by Delinsky)—

10:52:27 1 A. Correct.

10:52:28 2 Q. It was the HUB document that the ADAMHS board prepares;
10:52:31 3 correct?

10:52:31 4 A. Correct.

10:52:32 5 Q. Mr. Lanier showed you the 2018 version; correct?

10:52:37 6 A. Correct.

10:52:37 7 Q. And I believe you testified how -- how your ADAMHS board
10:52:42 8 was actually ahead of the requirements for filing these
10:52:46 9 reports; correct?

10:52:47 10 A. Correct.

10:52:47 11 Q. You were ahead of where the state wanted you to be and
10:52:49 12 where other ADAMHS boards were?

10:52:52 13 A. Um-hmm.

10:52:53 14 Q. And you actually referred to -- there was a follow-up
10:52:55 15 report for 2019, and that's what this is; correct?

10:52:59 16 A. Yes.

10:53:00 17 Q. Okay. I'd like to turn your attention to the very last
10:53:07 18 page of the report.

10:53:15 19 Mr. Lanier, can I borrow one of your highlighters,
10:53:18 20 please?

10:53:22 21 (Counsel conferring).

10:53:24 22 MR. DELINSKY: And could I have the ELMO, Mr. Pitts?

10:53:27 23 MR. LANIER: I can't give you that.

10:53:29 24 MR. DELINSKY: Thank you.

10:53:32 25 BY MR. DELINSKY:

—Fraser (Cross by Delinsky)—

10:53:32 1 Q. And you didn't write this entire report yourself, but you
10:53:34 2 participated in writing it; correct?

10:53:36 3 A. Yes.

10:53:36 4 Q. You approved it; correct?

10:53:38 5 A. Correct.

10:53:38 6 Q. And it was -- the purpose of this was to submit to the
10:53:41 7 State of Ohio; correct?

10:53:43 8 A. Correct.

10:53:43 9 Q. Okay. And I'm focused on this -- the very last paragraph
10:53:49 10 of the report, it looks like it's Paragraph 18 on Page 18
10:53:53 11 coincidentally, and it says, since 2017, opioid use appears to be
10:54:01 12 holding steady among clients.

10:54:05 13 That was true; correct?

10:54:06 14 A. Correct.

10:54:07 15 Q. Okay. And then it goes on to say, however, the use/abuse
10:54:14 16 of amphetamines, methamphetamines, and cocaine has increased
10:54:18 17 significantly-showing a large spike in use since the beginning
10:54:23 18 of 2019.

10:54:25 19 Correct?

10:54:26 20 A. Yes.

10:54:26 21 Q. True fact, correct.

10:54:29 22 A. That's what we were observing, yes.

10:54:31 23 Q. Okay. Cannabis, and I think we all know this now given how
10:54:40 24 this has evolved in the last 5 years, that's marijuana; right?

10:54:43 25 A. Correct.

—Fraser (Cross by Delinsky)—

10:54:43 1 Q. Cannabis has also been following this trend; right?

10:54:47 2 A. Yes.

10:54:48 3 Q. Okay. Just out of curiosity, does the ADAMHS board see
10:54:54 4 many patients suffering from marijuana? I don't know if
10:54:57 5 there's such a thing as marijuana use disorder or marijuana
10:54:59 6 addiction.

10:55:00 7 A. Yes, and yes. Individuals with all types of substance use
10:55:05 8 disorders come into our system.

10:55:07 9 Q. Okay. And I asked you about some. We obviously dealt with
10:55:10 10 the opioids, both prescription and illicit. We talked about
10:55:13 11 now marijuana, alcohol, methamphetamines. Now we have
10:55:21 12 amphetamines. What did I forget? Cocaine.

10:55:23 13 Are there any others?

10:55:26 14 A. I mean, we see some new psychoactive substances, so kind of
10:55:33 15 new manufactured drugs that might be combinations of different
10:55:38 16 things.

10:55:39 17 Q. Um-hmm.

10:55:39 18 A. Have come in.

10:55:41 19 Q. Any other street drugs -- and I don't mean that, any other
10:55:44 20 illegal drugs or did we sort of cover the territory?

10:55:48 21 I don't mean this to be a pop quiz or anything.

10:55:50 22 A. We talked about hallucinogens.

10:55:57 23 Q. And what are hallucinogens, is that -- I think of like, I
10:56:02 24 don't know, LSD?

10:56:03 25 A. Right. Exactly.

—Fraser (Cross by Delinsky)—

10:56:04 1 Q. All right. Is that more or less the territory? We won't
10:56:08 2 hold you to it.

10:56:09 3 A. Yes.

10:56:09 4 Q. Okay. All right. Let's go back to our Exhibit CVS MDL
10:56:19 5 04963, and where we were is as of December 2019 opioids had
10:56:26 6 held steady and amphetamines -- methamphetamines, cocaine, and
10:56:31 7 marijuana had been on the -- had been spiking; correct?

10:56:35 8 A. Yes, that's what we observed.

10:56:37 9 Q. Okay. The next line is in our residential treatment
10:56:44 10 programs, we had over 55 percent of clients' drugs of choice or
10:56:49 11 diagnosis been other drugs besides opioid -- opiates. And I'll
10:56:57 12 stop there.

10:56:58 13 Correct?

10:56:59 14 A. That was the progression that we saw from the prescription
10:57:03 15 pills to other drugs.

10:57:05 16 Q. And I -- and again, I do understand your testimony. I
10:57:09 17 don't necessarily agree with it, but I certainly understand.

10:57:12 18 MR. WEINBERGER: Objection to the comments of counsel.

10:57:15 19 THE COURT: That -- sustained.

10:57:16 20 MR. DELINSKY: I apologize.

10:57:18 21 BY MR. DELINSKY:

10:57:19 22 Q. But just focusing on just the substances that your agency
10:57:28 23 is dealing with in the here and now, putting the progression
10:57:31 24 aside, as of this report, less than half, less than 45 percent
10:57:41 25 of what your agency was treating, either directly or indirectly

—Fraser (Cross by Delinsky)—

10:57:48 1 in its residential programs, were patients who at the time were
10:57:54 2 suffering from a substance use issue other than opioids?

10:58:09 3 A. Again, just to be clear, this is as the clients reported to
10:58:14 4 us.

10:58:16 5 Q. Um-hmm.

10:58:16 6 A. So overwhelmingly, polysubstance abuse, using more than one
10:58:25 7 drug was very common. Individuals in this situation were
10:58:31 8 coming to us and saying --

10:58:36 9 Q. Yeah, we can't --

10:58:37 10 A. I'm being very careful of my language.

10:58:39 11 Q. Yeah.

10:58:40 12 MR. WEINBERGER: Your Honor, he opened up the door.
10:58:42 13 She shouldn't be limited to --

10:58:43 14 THE COURT: I agree. The witness can complete her
10:58:45 15 answer.

10:58:46 16 MR. DELINSKY: Well, Your Honor, can we go on the
10:58:47 17 headset, please?

10:58:48 18 THE WITNESS: Thank you.

10:58:52 19 (Proceedings at sidebar.)

10:59:04 20 MR. DELINSKY: Your Honor, I don't open the door to
10:59:06 21 hearsay because -- through examining her on her own words in
10:59:10 22 her own document.

10:59:11 23 THE COURT: You are, Mr. Delinsky. I don't know why
10:59:13 24 you're asking some of these questions, but if you ask a
10:59:15 25 question, you've got to let the witness answer. Okay? If you

—Fraser (Cross by Delinsky)—

10:59:19 1 want to withdraw the question, then move on, fine. You
10:59:24 2 asked -- you've asked a bunch of questions. I'm not sure why
10:59:28 3 you've asked them, but you're entitled to ask them. But when
10:59:30 4 you do, you've got to let the witness answer.

10:59:38 5 MR. DELINSKY: Thank you.

11:00:00 6 BY MR. DELINSKY:

11:00:01 7 Q. Ms. Fraser --

11:00:01 8 MR. WEINBERGER: She hasn't finished her question.

11:00:03 9 THE COURT: Have you withdrawn -- are you withdrawing
11:00:06 10 the question?

11:00:06 11 MR. DELINSKY: I withdraw the question, Your Honor.

11:00:08 12 THE COURT: Okay. Fine.

11:00:13 13 BY MR. DELINSKY:

11:00:14 14 Q. Ms. Fraser, you provided testimony about take-backs or the
11:00:17 15 bags through which you can depose prescription and other types
11:00:23 16 of drugs; correct?

11:00:24 17 A. Yes.

11:00:25 18 Q. Okay. And the importance of those efforts is to -- is
11:00:37 19 because a significant piece -- not the whole piece, but a piece
11:00:43 20 of the problem is that excess pills reside in medicine cabinets
11:00:49 21 and friends, family, visitors to a home can go in and take them
11:00:54 22 and then use them for nonmedical reasons; correct?

11:00:58 23 A. That is a piece of the epidemic, yes.

11:01:02 24 Q. Okay. And the value of the bags to encourage people if
11:01:09 25 they have excess pills that they've received through a

—Fraser (Cross by Delinsky)—

11:01:14 1 prescription from their doctor, to get them out of the house so
11:01:17 2 no one can take them, no one can misuse them; correct?

11:01:21 3 A. Our efforts were to get this flood of prescription pills
11:01:26 4 out of our community, off our streets.

11:01:29 5 Q. And in addition to the bags, you can also have actual
11:01:42 6 boxes, right, secured boxes that a person can go to and drop
11:01:45 7 them off; right?

11:01:46 8 A. That's correct.

11:01:46 9 Q. Okay. And they're oftentimes in police stations; correct?

11:01:51 10 A. When -- in Lake County, when we established that program in
11:01:55 11 2011, we put seven permanent drop boxes in police departments,
11:02:01 12 as I think I said before, including in our community college
11:02:08 13 where individuals could take those medications, take what was
11:02:11 14 in their medicine cabinets and have those properly disposed of.

11:02:20 15 Q. And you know as well that those drop boxes can be in
11:02:24 16 pharmacies too; correct?

11:02:26 17 A. To my knowledge, at the time that we established this in
11:02:31 18 2011, we were the only ones doing it in the county.

11:02:34 19 Q. Okay. And do you know that it actually wasn't until much
11:02:39 20 more recently that the law didn't allow pharmacies to have
11:02:41 21 them, or is that outside your knowledge?

11:02:43 22 MR. WEINBERGER: Objection, Your Honor.

11:02:49 23 THE COURT: Sustained.

11:02:51 24 BY MR. DELINSKY:

11:02:52 25 Q. Focusing on the present, you know that CVS pharmacies in

—Fraser (Cross by Delinsky)—

11:02:55 1 Lake County have these drop off boxes.

11:03:00 2 A. I'm not aware of that.

11:03:01 3 Q. Okay. Are you familiar with Lake Shore Boulevard CVS in
11:03:09 4 Mentor?

11:03:09 5 A. I have driven by it.

11:03:11 6 Q. Okay. Never -- how about the SOM Center Road in
11:03:15 7 Willoughby?

11:03:16 8 A. I've driven by that as well.

11:03:17 9 Q. Not in it?

11:03:18 10 A. Not in it.

11:03:19 11 Q. North Ridge Road in Painesville? No?

11:03:21 12 A. You're going outside my circle, no.

11:03:24 13 Q. Okay. Sorry about that. Well, maybe this one's in Chardon
11:03:29 14 Road in Willoughby Hills?

11:03:31 15 A. I have not been.

11:03:33 16 Q. You haven't been to them. Fair enough.

11:03:35 17 One last question, Ms. Fraser. You did provide some
11:03:39 18 testimony on the potential transition, you've already testified
11:03:46 19 to this, of patients from prescription opioids to illegal
11:03:56 20 opioids; correct?

11:03:58 21 A. That has -- we have seen that transition, yes.

11:04:02 22 Q. You don't have data from Lake County that would inform us
11:04:10 23 on the extent to which the person -- the individual who
11:04:15 24 progressed received the opioid pursuant to a prescription from
11:04:19 25 their doctor or rather received it in an illegitimate way;

—Fraser (Cross by Delinsky)—

11:04:30 1 correct?

11:04:38 2 A. The information I have is from doing my job, collecting
11:04:45 3 data, speaking with stakeholders, speaking with my community.

11:04:51 4 Q. Okay. And you understand that even the prescription pills
11:04:58 5 can be obtained through illegitimate means; correct?

11:05:03 6 A. Certainly, yes.

11:05:04 7 Q. And we talked about one, the medicine cabinet; correct?

11:05:07 8 A. Yes.

11:05:08 9 Q. Okay. That they can be obtained from drug dealers on the
11:05:13 10 street as well; correct?

11:05:21 11 A. The prescriptions that I'm aware of are by and large coming
11:05:29 12 out of the pharmacies.

11:05:31 13 Q. Oh -- yeah, we'll -- I'm sorry.

11:05:35 14 A. Perhaps I misunderstood.

11:05:38 15 Q. No. No. No. That's me. I'm not the model of clarity
11:05:41 16 this morning. You're absolutely right.

11:05:42 17 Prescriptions are filled by pharmacies and people can
11:05:45 18 get prescription opioids if they're prescribed by their doctor
11:05:49 19 and those prescriptions are presented at a pharmacy and a
11:05:51 20 pharmacy fills them; correct?

11:05:52 21 A. That's where they're coming from, yes.

11:05:55 22 Q. No doubt about it.

11:05:56 23 But they also -- a person who misuses prescription
11:06:04 24 opioids also can obtain them in illegitimate ways other than
11:06:07 25 through a prescription from their doctor?

—Fraser (Cross by Delinsky)—

11:06:08 1 A. That does happen to support the addiction, yes.

11:06:11 2 Q. Yeah, okay.

11:06:12 3 MR. DELINSKY: Thank you, Ms. Fraser. I have nothing
11:06:14 4 further. I appreciate you answering my questions.

11:06:25 5 THE COURT: Anything from any of the other defendants?

11:06:27 6 MR. MAJORAS: Nothing from Walmart, Your Honor.

11:06:28 7 THE COURT: Thank you, Mr. Majoras.

11:06:30 8 MS. SULLIVAN: Nothing from Giant Eagle.

11:06:30 9 THE COURT: Thank you, Ms. Sullivan.

11:06:31 10 MR. SWANSON: Nothing from Walgreens.

11:06:31 11 THE COURT: Thank you, Mr. Swanson.

11:06:34 12 All right. Before we have redirect, we'll see if any
11:06:36 13 of the jurors have any follow-up questions for Ms. Fraser.

11:07:53 14 (Brief pause in proceedings).

11:10:56 15 MR. WEINBERGER: Your Honor, I think we need a
11:10:58 16 sidebar.

11:10:59 17 THE COURT: All right.

11:11:05 18 (Proceedings at sidebar.)

11:11:25 19 MR. LANIER: Your Honor, the plaintiffs are fine
11:11:26 20 asking any of the questions.

11:11:27 21 THE COURT: Well --

11:11:28 22 MR. LANIER: But there's a sheet that had three on it
11:11:31 23 that the defendants have agreed to.

11:11:32 24 THE COURT: Well, some of those shouldn't be asked.

11:11:34 25 MR. LANIER: Okay. Just let me know which ones are

—Fraser (Cross by Delinsky)—

11:11:36 1 okay and I'll ask them.

11:11:42 2 THE COURT: Number 2 should not be asked. This
11:11:45 3 witness isn't an expert to opine as to what percentage of the
11:11:48 4 epidemic was caused by prescription opioids, counterfeit pills,
11:11:52 5 et cetera, so don't touch Number 2.

11:11:55 6 I don't have a problem with Number 3, how secure are
11:11:59 7 the drop boxes.

11:12:04 8 The first one, in what sense has the opioid epidemic
11:12:11 9 affected the workforce in Lake County, again, this gets into a
11:12:16 10 lot of hearsay, and I don't -- I don't think we should go
11:12:24 11 there. So I -- you can ask Number 3 by the drop boxes and then
11:12:30 12 the other question about what year did Lake County experience
11:12:34 13 the opioid-related overdoses, if she knows, she can answer
11:12:38 14 that.

11:12:40 15 Statistics about the increase or decrease in opioid
11:12:48 16 trend, she's not an expert, so stay away from that. So just go
11:12:52 17 with those two, I think.

11:12:53 18 MR. WEINBERGER: Your Honor, could you instruct the --
11:12:55 19 inform the jury again that you rule on what questions are
11:12:59 20 appropriate for this witness.

11:13:01 21 THE COURT: All right.

11:13:02 22 MR. WEINBERGER: Thank you.

11:13:13 23 (In open court at 11:13 a.m.)

11:13:13 24 THE COURT: All right. Ladies and gentlemen, given
11:13:14 25 these -- the questions have been given to counsel. As I

—Fraser (Redirect by Lanier)—

11:13:17 1 indicated, it's up to counsel what questions to ask. Sometimes
11:13:23 2 there's discussion with me. If we determine that a case --
11:13:27 3 that a question isn't relevant or is outside the scope of the
11:13:31 4 witness's knowledge, it won't be asked. It may be asked with
11:13:34 5 another -- another witness, but all questions are appreciated.

11:13:44 6 MR. LANIER: Just making sure I've got the right ones,
11:13:50 7 Judge.

11:13:50 8 REDIRECT EXAMINATION OF KIM FRASER

11:14:07 9 BY MR. LANIER:

11:14:07 10 Q. Ms. Fraser, I think there are just a couple of juror
11:14:10 11 questions for you.

11:14:11 12 A. Okay.

11:14:11 13 Q. So that we can put on here.

11:14:14 14 First, how secure are these drop boxes? Can the
11:14:19 15 medications somehow be diverted, especially the ones that are
11:14:22 16 located in colleges?

11:14:27 17 A. Yeah, that's a very good question because this was
11:14:29 18 something that our opiate task force took very seriously. The
11:14:34 19 boxes are extremely secure, and they are not emptied by us,
11:14:41 20 they are emptied by the Lake County Sheriff's Office.
11:14:45 21 Everything that is in those is taken to a discreet site, I
11:14:49 22 don't even know where it is, where those are incinerated. But
11:14:55 23 yeah, the security of those boxes is assured by our sheriff's
11:15:06 24 office and the police departments they reside in.

11:15:09 25 MR. LANIER: Your Honor. . . I'm not sure on this.

—Fraser (Redirect by Lanier)—

11:15:16 1 THE COURT: All right. Go back on the headphones a
11:15:17 2 minute.

11:15:18 3 MR. LANIER: I just need a. . .

11:15:30 4 (Proceedings at sidebar.)

11:15:30 5 MR. LANIER: You said no on statistics, and I don't
11:15:32 6 know if that's included in statistics or not.

11:15:34 7 THE COURT: Well, this juror question, in what year
11:15:36 8 did Lake County experience the most opioid-related overdoses, I
11:15:42 9 have no problem with that question unless any of the defendants
11:15:45 10 object. She may know. She may not. It's a neutral question.
11:15:49 11 She's testified to overdoses, so --

11:15:52 12 MR. LANIER: Understood, Your Honor. Thank you,
11:15:54 13 Judge.

11:15:54 14 THE COURT: Any of the defendants have a problem with
11:15:55 15 that general question?

11:15:59 16 Hearing none, you may ask that one, Mr. Lanier.

11:16:02 17 MR. LANIER: Thank you.

11:16:15 18 (In open court at 11:16 a.m.)

11:16:15 19 BY MR. LANIER:

11:16:16 20 Q. And then the other one is, in what year -- and obviously
11:16:20 21 this is if you know -- in what year did Lake County experience
11:16:24 22 the most opioid-related overdoses?

11:16:27 23 A. Our peak was in 2017. We've lost over 400 people in the
11:16:34 24 last 5 years, but the peak was in 2017.

11:16:39 25 Q. Thank you.

—Fraser (Redirect by Lanier)—

11:16:39 1 MR. LANIER: And Your Honor, for my own purposes, I
11:16:42 2 have no redirect of this witness.

11:16:47 3 THE WITNESS: Okay. Any follow-up questions from
11:16:49 4 Mr. Delinsky or any other counsel?

11:16:51 5 MR. DELINSKY: No, thank you, Judge.

11:16:54 6 MR. MAJORAS: No, thank you, Your Honor.

11:16:55 7 MS. SULLIVAN: Nothing for Giant Eagle, Your Honor.

11:16:59 8 MR. SWANSON: No, thank you, Your Honor.

11:17:00 9 THE COURT: All right. Thank you very much,
11:17:01 10 Ms. Fraser, you may return to your seat. Thank you.

11:17:03 11 THE WITNESS: Thank you.

11:17:04 12 (Witness excused.)

11:17:27 13 THE COURT: All right. Mr. Lanier, you may proceed.

11:17:30 14 MR. WEINBERGER: Your Honor, at this point in time, on
11:17:34 15 behalf of the plaintiffs, I think it's appropriate for us to
11:17:38 16 take a recess to discuss legal issues.

11:17:45 17 THE COURT: All right. Ladies and gentlemen, we'll
11:17:46 18 take a brief recess. I'd rather not do it on the headphones,
11:17:50 19 so if you could just go back to the jury room and then we'll
11:17:54 20 call you as soon as we're ready.

11:17:56 21 (Jury excused from courtroom at 11:17 a.m.)

11:18:38 22 THE COURT: Okay. Please be seated.

11:18:55 23 MR. WEINBERGER: Your Honor, at this point in time, I
11:18:55 24 believe --

11:19:00 25 Mr. Marcus, am I correct?

11:19:02 1 Okay. I believe Mr. Marcus is prepared to make a
11:19:05 2 statement for the record on behalf of Giant Eagle.

11:19:09 3 THE COURT: All right. Mr. Marcus, if you want to
11:19:12 4 come forward please and identify yourself, and you can take
11:19:15 5 your mask off while speaking, sir.

11:19:17 6 MR. MARCUS: Thank you, Your Honor.

11:19:18 7 Bernie Marcus representing Giant Eagle, along with
11:19:23 8 Ms. Sullivan and Ms. Fiebig.

11:19:26 9 Your Honor, I know there's been some discussion in
11:19:31 10 court and then in chambers about some questioning of the
11:19:38 11 witnesses here, and I want to state for the record that
11:19:43 12 Giant Eagle in no way intended to suggest that these -- that
11:19:49 13 the complaint against Giant Eagle was filed for any improper
11:19:55 14 purpose. And I want that to be very clear on the record.

11:20:00 15 There were circumstances that came out yesterday that
11:20:04 16 the questioning went on and on, and I guess some people thought
11:20:08 17 differently about what those questions and answers meant, but
11:20:13 18 Giant Eagle did not intend any improper conduct on the part of
11:20:20 19 plaintiffs in filing the claim. And they apologize to the
11:20:26 20 extent anybody was offended.

11:20:29 21 THE COURT: Okay. Thank you very much, sir.

11:20:35 22 MR. WEINBERGER: If I may just have a moment,
11:20:37 23 Your Honor.

11:20:37 24 THE COURT: Okay.

11:20:38 25 (Counsel conferring).

11:21:51 1 MR. WEINBERGER: Your Honor, I'm sorry. I'm a little
11:21:56 2 bit of a quandary as to how to proceed at this point in point,
11:21:59 3 and with the Court's indulgence, I would request an in-chambers
11:22:07 4 conference. I'm sorry. I apologize.

11:22:08 5 THE COURT: All right. Well, we're going to have to
11:22:10 6 charge this time to the plaintiffs, so we're moving on, but all
11:22:13 7 right.

11:22:14 8 MR. WEINBERGER: Well --

11:22:15 9 THE COURT: Well, who do you want to confer with?

11:22:19 10 MR. WEINBERGER: With you and with Mr. Marcus and --
11:22:23 11 it has to do with the --

11:22:25 12 THE COURT: All right. All right. Well, we'll charge
11:22:26 13 the time to the plaintiff at this point in time.

11:22:29 14 MR. WEINBERGER: All right. Well --

11:22:30 15 THE COURT: All right. Well, I -- let's go.

11:22:36 16 MR. STOFFELMAYR: Judge, I don't want to -- I'm sorry.
11:22:37 17 I don't want to, obviously, interfere with the
11:22:38 18 conference, but if you could just keep in mind when you come
11:22:40 19 back, there are a lot of people here who have no idea what's
11:22:42 20 going on.

11:22:42 21 THE COURT: No, I understand that.

11:22:44 22 MR. STOFFELMAYR: And they're very confused.

11:22:46 23 THE COURT: But I'm charging the time to the
11:22:48 24 plaintiffs. They want to -- these two defendants [sic] want to
11:22:51 25 confer, I'm doing it.

11:22:53 1 MR. STOFFELMAYR: Understood, Your Honor.

11:22:54 2 THE COURT: Understood.

11:22:56 3 (Recess was taken at 11:22 a.m.)

11:28:07 4 (In open court at 11:28 a.m.)

11:28:07 5 THE COURT: All right. Everyone can be seated.

11:28:21 6 Okay. Mr. Lanier, Mr. Weinberger, how to you wish to
11:28:25 7 proceed?

11:28:25 8 MR. WEINBERGER: Your Honor, subject to the -- our
11:28:29 9 moving for the admission of some outstanding exhibits and
11:28:34 10 reading some answers to interrogatories pertinent to the case,
11:28:40 11 plaintiffs are prepared to rest.

11:28:44 12 THE COURT: Okay. Very good.

11:28:47 13 I guess the defendants wanted to make some oral
11:28:53 14 motions which you're going to supplement in writing.

11:28:56 15 Is that -- is that the understanding?

11:28:57 16 MR. STOFFELMAYR: Judge, Kaspar Stoffelmayr.

11:28:59 17 I think at this point in time our plan is just to file
11:29:01 18 a Rule 50 motion in writing.

11:29:03 19 THE COURT: Oh, all right.

11:29:06 20 MR. STOFFELMAYR: Probably not immediately, but
11:29:07 21 certainly before the jury would deliberate.

11:29:12 22 THE COURT: Okay. That's fine.

11:29:13 23 MR. DELINSKY: Your Honor, the same.

11:29:15 24 We -- I mean, if it's important for you to hear us say
11:29:18 25 we move under Rule 50, we do, but we'll put in something in

11:29:22 1 writing shortly.

11:29:23 2 THE COURT: It's timely. Okay? I mean, you can
11:29:24 3 always move for it at any time, so. . .

11:29:26 4 MR. DELINSKY: You probably have to poll the other
11:29:30 5 defendants on this, but I'd like to come back to scheduling,
11:29:33 6 Your Honor, because this is unexpected on our part.

11:29:35 7 THE COURT: Well -- all right, so we'll have Rule 50
11:29:40 8 motions, and you can file them whenever you want.

11:29:44 9 OMR. MAJORAS: Your Honor, John Majoras. Just so I'm
11:29:45 10 not left out of this, Walmart likewise will be filing Rule 50
11:29:49 11 motions.

11:29:49 12 THE COURT: Okay. All right.

11:29:53 13 MR. WEINBERGER: Your Honor, with -- I think we need
11:29:55 14 to have some reasonable deadline for the filing of the motions
11:30:00 15 only because we need an opportunity to respond.

11:30:04 16 THE COURT: Well, that's a good -- well, the point
11:30:08 17 is --

11:30:09 18 MR. WEINBERGER: And we need sufficient time for that,
11:30:11 19 Your Honor.

11:30:11 20 THE COURT: The longer the delay is, the more
11:30:12 21 meaningless they are because we're proceeding, so, I mean --
11:30:17 22 and it's pretty clear that I'm not going to stop the trial.
11:30:21 23 I'm not stopping the trial. So -- but I agree there --
11:30:26 24 there's -- I do need to put a deadline on them, if -- if -- I
11:30:31 25 mean, if you want them considered, okay, so what are you

11:30:36 1 proposing?

11:30:38 2 MR. STOFFELMAYR: Judge, I think they can be filed any
11:30:41 3 time before the jury you retires to deliberate.

11:30:43 4 THE COURT: Sure, but if you want them considered in a
11:30:45 5 meaningful way. . .

11:30:47 6 MR. STOFFELMAYR: Understood. But I think that's, you
11:30:50 7 know, a decision we'd like to make.

11:30:51 8 THE COURT: All right.

11:30:51 9 MR. STOFFELMAYR: I understand you'll let
11:30:54 10 plaintiffs -- whenever we fill them, I'm sure you will give
11:30:57 11 plaintiffs ample time to respond. I think as a practical
11:31:00 12 matter, they are unlikely to be fully briefed and decided
11:31:00 13 before the jury begins to deliberate anyway. We're going to
11:31:04 14 have the next few weeks of trial, and that trial may be getting
11:31:08 15 shorter as things develop.

11:31:10 16 THE COURT: I'm not going to touch them while the jury
11:31:12 17 is deliberating, Mr. Stoffelmayr.

11:31:15 18 MR. STOFFELMAYR: Understood. I guess what I'm saying
11:31:16 19 is, let's say we filed them, you know, tomorrow, plaintiffs
11:31:19 20 said we'd like 2 weeks to respond, we'd file reply briefs.
11:31:24 21 You're not going to be deciding them until -- unless we, you
11:31:26 22 know, want to give you a 2-pager.

11:31:28 23 THE COURT: Look, candidly, I don't really care. They
11:31:29 24 don't matter in my -- I mean, in my humble opinion they don't
11:31:33 25 really matter. Okay? You can file them whenever you want. If

11:31:36 1 you wait till the very last day of trial, then, you know, you
11:31:40 2 know, at that point -- at that point they'll be moot. I mean,
11:31:44 3 if you file something after a verdict, if there is one, then
11:31:47 4 you can file something then. So I -- I really -- you can file
11:31:52 5 them whatever you want.

11:31:53 6 Okay. So --

11:31:55 7 MR. MAJORAS: Your Honor, we'll file expeditiously.

11:31:57 8 THE COURT: Okay. That's fine.

11:32:00 9 All right. Well, I don't want to -- we'll deal with
11:32:04 10 exhibits when people are ready to deal with exhibits, so I
11:32:07 11 think we should just, you know, proceed with the defendants'
11:32:10 12 case.

11:32:12 13 MR. DELINSKY: Your Honor, we'd ask that as soon as
11:32:14 14 the plaintiffs close, that we recess for the day. This has --

11:32:20 15 THE COURT: No. That's denied.

11:32:21 16 MR. DELINSKY: Your Honor, could I please be heard on
11:32:22 17 this?

11:32:28 18 This has been a difficult week for us because several
11:32:31 19 witnesses have dropped off, whether it was Professor Cutler.

11:32:37 20 THE COURT: Well, we knew Cutler wasn't coming. I
11:32:37 21 mean --

11:32:39 22 MR. DELINSKY: Well, we didn't know till the very end
11:32:41 23 of last week. It was Ms. Highland, now it's Mr. Chunderlik,
11:32:49 24 and it has -- we are in a bind and we do not have witnesses for
11:32:55 25 the rest of the week. We couldn't have predicted this, and we

11:33:00 1 were in a vulnerable position because of the witnesses dropping
11:33:03 2 off at the beginning of the week and we were hustling, and we
11:33:06 3 thought we had done the best we could for that. But now this,
11:33:09 4 it was entirely unexpected. We couldn't have foreseen this,
11:33:12 5 Your Honor, so we ask --

11:33:14 6 THE COURT: Well, wait a minute. I mean, the most --
11:33:16 7 we had one more witness, Mr. Chunderlik.

11:33:19 8 MR. DELINSKY: And our understanding was that that
11:33:20 9 would be for the rest of the day. I think we represented that
11:33:22 10 on the record yesterday.

11:33:23 11 THE COURT: Well, I made it -- it was unclear and I
11:33:24 12 made it clear you had to have at least one deposition ready,
11:33:27 13 and I know that Mr. Majoras said that you'll have a deposition
11:33:31 14 ready, so --

11:33:31 15 MR. DELINSKY: Right. We do have a deposition ready,
11:33:32 16 Your Honor, but that's not going to -- we, at this point, we
11:33:35 17 can't fill out the remainder of the week. So we think what
11:33:39 18 makes the most sense is to recess after the plaintiffs close.
11:33:43 19 We'll come back tomorrow morning. We'll finish the whole week.

11:33:46 20 There have been one or two occasions, I think two at
11:33:50 21 least, in the trial where accommodations were made to
11:33:53 22 plaintiffs' side to end early on a day -- on more than one day
11:33:57 23 where -- one was on a Friday, one was because they didn't have
11:33:59 24 a witness.

11:34:00 25 THE COURT: Well, that was both sides wanted a recess

11:34:01 1 for Friday. Okay?

11:34:02 2 MR. DELINSKY: No. There were other times as well
11:34:04 3 where that wasn't the case. And, look, there's just a
11:34:07 4 logistics issue here, Your Honor, and we tried other very best,
11:34:11 5 we were ready to go, but this -- we just can't do it. We just
11:34:14 6 can't.

11:34:17 7 MR. MAJORAS: Your Honor, if I -- John Majoras. If I
11:34:19 8 can -- I can add to that. In particular, with Mr. Chunderlik,
11:34:21 9 as you might recall, he was originally going to be called the
11:34:24 10 very first week of trial, and it kept getting pushed back.

11:34:28 11 We -- other than Giant Eagle, and I don't know what
11:34:31 12 Giant Eagle knows, I know Ms. Sullivan has not been attuned
11:34:35 13 with some of the other things that have been happening, but
11:34:38 14 until two minutes ago, we didn't know Mr. Chunderlik wasn't
11:34:40 15 going to be called. I think our -- the information to us was
11:34:45 16 very clear, he would run the course of the day and he was still
11:34:49 17 scheduled as of last night. We all heard that from the
11:34:52 18 plaintiffs' side.

11:34:54 19 THE COURT: But we had this discussion yesterday and
11:34:55 20 there was -- I made it clear you were to have at least one
11:34:57 21 deposition ready and you said you would, so let's have at least
11:35:00 22 one.

11:35:01 23 MR. MAJORAS: Your Honor, if we need --

11:35:02 24 THE COURT: If you have only one, then I guess we'll
11:35:04 25 have to stop after one.

11:35:06 1 MR. MAJORAS: And, Your Honor, if we need to play a
11:35:07 2 deposition, we do have a deposition as we talked about
11:35:09 3 yesterday.

11:35:09 4 THE COURT: Well --

11:35:10 5 MR. MAJORAS: One other issue related to the
11:35:13 6 plaintiffs' resting, they mentioned that they were planning to
11:35:16 7 call or read interrogatory responses into the record. I think
11:35:22 8 that should be done immediately. We believe in a number of
11:35:25 9 instances they haven't made any showing of proof on certain of
11:35:28 10 their claims, and perhaps the interrogatories will go to that,
11:35:32 11 I don't know, but we're entitled to hear that before they rest.

11:35:36 12 THE COURT: Well, I don't know what these
11:35:37 13 interrogatories are.

11:35:38 14 MR. MAJORAS: I don't either.

11:35:40 15 THE COURT: We'll read the interrogatories and then
11:35:42 16 we'll -- you know, it may be time for a lunch break, and then
11:35:45 17 we'll have the -- who's the -- who's the deponent we're going
11:35:49 18 to play?

11:35:51 19 Well, you can decide. It doesn't matter. We've
11:35:53 20 got --

11:35:53 21 MR. DELINSKY: I'm sorry, Your Honor. Do you mean
11:35:54 22 who's the -- I misunderstood. You mean the deposition we're
11:35:58 23 going to play?

11:35:58 24 THE COURT: Deponent, right.

11:36:00 25 MR. DELINSKY: Theresa Toigo, I believe, from the Food

11:36:04 1 and Drug Administration.

11:36:04 2 THE COURT: Okay.

11:36:09 3 All right. Do we have these interrogatories that
11:36:12 4 we're going to introduce? I think Mr. Majoras is right.
11:36:16 5 That's -- this is the appropriate time.

11:36:22 6 MR. LANIER: Mr. Weinberger is el jefe on that, and he
11:36:27 7 is, I think, grabbing them as we speak, or he's going to the
11:36:36 8 men's room.

11:36:59 9 MR. WEINBERGER: Your Honor, we're going to have to
11:37:01 10 get our act together and organize which interrogatory answers
11:37:06 11 we need read into the record. I apologize. I'll take full
11:37:09 12 responsibility for it.

11:37:16 13 THE COURT: How long is this going to take?

11:37:22 14 MR. WEINBERGER: I think -- I think a few minutes.

11:37:25 15 THE COURT: Oh, all right.

11:37:26 16 MR. WEINBERGER: 15 minutes or. . . or we can take our
11:37:29 17 lunch break now and come back.

11:37:32 18 THE COURT: All right. Yeah. I. . . all right. I'm
11:37:39 19 going to charge this time to the plaintiff. If we're going
11:37:43 20 to -- we'll recess for lunch and come back at 1 o'clock, and
11:37:46 21 what we'll do is at that point -- I mean -- these have to be
11:37:52 22 relevant. They're entitled to put in answers to
11:37:57 23 interrogatories as admissions, but at least the defendants need
11:38:00 24 to know what you're going to put in. If there's any
11:38:03 25 objections, I'll hear briefly, then you'll read the

11:38:06 1 objections -- read the interrogatories -- or I guess I read.

11:38:09 2 How do you want to do this? I don't -- do I read them
11:38:12 3 or do you --

11:38:12 4 MR. WEINBERGER: No. We'd be happy to read them, and
11:38:15 5 Your Honor, that will give -- that's a great suggestion. We'll
11:38:18 6 confer with -- we'll select them, confer with each of the
11:38:22 7 defendants and be prepared to move expeditiously. And again, I
11:38:25 8 apologize.

11:38:25 9 THE COURT: All right. Well -- all right. And
11:38:28 10 then -- I mean, obviously that's part of your case, that's part
11:38:30 11 of your time, and then we'll have Ms. Toigo's deposition.

11:38:35 12 Okay.

11:38:36 13 MR. DELINSKY: Your Honor, it's T-o-i-g-o. I'm not
11:38:39 14 exactly sure how to pronounce it either.

11:38:43 15 MR. WEINBERGER: Toigo.

11:38:44 16 THE COURT: Toigo. Okay. Thank you. I want to
11:38:45 17 pronounce her correctly.

11:38:48 18 Okay. All right. Well, that -- we'll bring the jury
11:38:51 19 back in, Mr. Pitts.

11:40:21 20 (Jury returned to courtroom at 10:40 a.m.)

11:40:21 21 THE COURT: Okay. Please be seated, ladies and
11:40:23 22 gentlemen. I apologize for the delay. There are a few more
11:40:25 23 legal matters, and by the time we take -- finish those, it will
11:40:29 24 be lunchtime, and there's no point you delaying, so I'll give
11:40:32 25 you a slightly longer lunch for today. We'll recess, reconvene

11:40:37 1 promptly at 1 o'clock.

11:40:38 2 Have a good lunch. Again, usual admonitions apply.

11:40:42 3 Don't encounter anything with the media. Don't do any

11:40:46 4 research. Don't discuss the case, and we'll resume at

11:40:51 5 1 o'clock. Have a good lunch.

11:40:52 6 (Jury excused from courtroom at 11:40 a.m.)

11:41:27 7 THE COURT: Okay. Unless there was anything anyone

11:41:32 8 wanted to bring up, we'll just take a slightly longer lunch.

11:41:36 9 You can work on the interrogatories.

11:41:39 10 MR. LANIER: Thank you, Judge.

11 COUNSEL EN MASSE: Thank you, Your Honor.

12 (Recess was taken from 11:41 a.m. till 1:02 p.m.)

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1 AFTERNOON SESSION

01:02:02 2 (In open court at 1:02 p.m.)

01:02:02 3 COURTROOM DEPUTY: All rise.

01:02:09 4 THE COURT: All right. Please be seated.

01:02:23 5 All right. Mr. Weinberger, Mr. Lanier, how to you
01:02:27 6 wish to proceed?

01:02:28 7 MR. WEINBERGER: Your Honor, at this time, we are
01:02:34 8 announcing that we have reached a resolution with Giant Eagle,
01:02:44 9 and they --

01:02:50 10 THE COURT: All right. Well, I'll deal with that in a
01:02:52 11 minute. Are you -- are you offering any interrogatories or
01:02:55 12 anything else?

01:03:00 13 MR. WEINBERGER: We have made a decision not to read
01:03:02 14 any interrogatory answers and, subject to admission of some
01:03:08 15 additional exhibits, we are prepared to rest.

01:03:12 16 THE COURT: All right. I was handed a couple of
01:03:15 17 documents. I have no idea what these are.

01:03:17 18 MR. WEINBERGER: So, Your Honor, those are ours.

01:03:20 19 As you recall, there's been discussion about the IMS
01:03:23 20 contracts, and this is simply a list of all of them with P
01:03:30 21 numbers, and the declaration that goes with them is the
01:03:34 22 declaration from IQVIA/IMS that also deals with each of those
01:03:47 23 defendants.

01:03:49 24 MR. DELINSKY: And, Your Honor, I believe where we
01:03:51 25 left off last night was that these could not be admitted on the

01:03:54 1 current record. It would be a matter of seeing where it goes
01:03:56 2 with defense witnesses, since there isn't a witness who's
01:03:59 3 testified to any of these.

01:04:00 4 THE COURT: All right. Well, these can all be used
01:04:02 5 with defense witnesses for sure.

01:04:04 6 All right.

01:04:08 7 MR. WEINBERGER: Well, we're going to move for
01:04:10 8 admission, and then, you know, obviously the Court can rule.

01:04:12 9 THE COURT: I mean, there's a number of exhibits I'm
01:04:14 10 going to have to rule on.

01:04:15 11 MR. WEINBERGER: Sure.

01:04:16 12 THE COURT: I think I already dealt with these. They
01:04:18 13 can all be used -- all right. None of them have been
01:04:22 14 identified or authenticated. There's been testimony by one
01:04:30 15 witness so I'm sure -- I'm sure they'll come up with a lot of
01:04:34 16 other defense witnesses, CVS witnesses.

01:04:36 17 MR. WEINBERGER: Yes, Your Honor.

01:04:36 18 THE COURT: All right. This is what I propose to tell
01:04:38 19 the jury. If any of the defendants want to tweak the language,
01:04:44 20 I would say Giant Eagle is no longer part of this case. The
01:04:51 21 fact that Giant Eagle started in this case and is no longer in
01:04:55 22 the case has no bearing on plaintiffs' allegations against the
01:04:59 23 other three defendants. You should not consider it in way in
01:05:08 24 deciding whether or not plaintiffs have proved this case --
01:05:11 25 proved their case against Walmart, Walgreens, or CVS.

01:05:13 1 How does that sound to everyone?

01:05:19 2 MR. DELINSKY: Can we have one moment, Your Honor?

01:05:22 3 THE COURT: Sure.

01:05:25 4 MR. WEINBERGER: So, we have some comments.

01:05:26 5 THE COURT: Let them -- let them --

01:05:28 6 MR. WEINBERGER: Okay.

01:05:29 7 THE COURT: Confer.

01:05:34 8 (Counsel conferring).

01:05:36 9 MR. MARCUS: Your Honor, if I may, I want to say

01:05:38 10 good-bye and I thank you for your indulgence. I know I've been

01:05:40 11 a little bit of a pain for you, but I did what had to be done.

01:05:44 12 THE COURT: All right. Well, thank you, Mr. Marcus.

01:06:35 13 (Brief pause in proceedings).

01:06:45 14 MR. MAJORAS: Your Honor, John Majoras from Walmart.

01:06:48 15 THE COURT: Yes.

01:06:49 16 MR. MAJORAS: The defendants believe that the

01:06:51 17 notification to the jury should be plainer and can be done a

01:06:55 18 little simpler but saying the same thing. I'll outline some

01:06:59 19 language.

01:07:00 20 THE COURT: I'm open to suggestions. It's not a --

01:07:02 21 you know.

01:07:03 22 MR. MAJORAS: I'll read some language and then if you

01:07:04 23 need me to, I don't have it written or typed out.

01:07:07 24 THE COURT: All right. What do you suggest?

01:07:09 25 MR. MAJORAS: Giant Eagle -- I'll read the whole thing

01:07:12 1 and then I can go back slowly, Your Honor.

01:07:12 2 THE COURT: Okay.

01:07:13 3 MR. MAJORAS: Giant Eagle is no longer a part of this
01:07:16 4 case. You should not consider that fact nor speculate about
01:07:20 5 the reasons why Giant Eagle is no longer involved in this case.
01:07:22 6 You should not draw any inferences for or against any of the
01:07:25 7 remaining parties by reason of the departure of one of the
01:07:29 8 parties.

01:07:31 9 MR. LANIER: That sounds great to us, Your Honor.

01:07:32 10 THE COURT: That sounds fine. I don't think it's --
01:07:36 11 it's longer than mine, but I -- but I actually like it better,
01:07:41 12 so -- all right.

01:07:44 13 MR. STOFFELMAYR: Do you need it in writing,
01:07:46 14 Your Honor, or --

01:07:47 15 THE COURT: Well, if you have it, that's great.

01:07:49 16 MR. MAJORAS: I could write it out for Your Honor, I
01:07:51 17 will. Give me just a moment.

01:07:52 18 THE COURT: Okay. Well, I mean, Giant Eagle is no
01:07:54 19 longer part of this case. I got that. That was my first
01:07:56 20 sentence. You should not consider that fact. . .

01:07:59 21 MR. DELINSKY: Judge, you could read it from --

01:08:05 22 MR. STOFFELMAYR: Well, there is somebody writing
01:08:06 23 everything down.

01:08:07 24 THE COURT: Well, someone have it?

01:08:11 25 SPECIAL MASTER COHEN: It's on your sametime.

01:08:12 1 THE COURT: Well, I know, but I'll --

01:08:14 2 MR. MAJORAS: I can go through it with Your Honor if
01:08:16 3 you'd like.

01:08:17 4 THE COURT: Giant Eagle is no longer part of this
01:08:19 5 case. You should not consider that fact.

01:08:21 6 MR. MAJORAS: Nor speculate about the reasons why
01:08:25 7 Giant Eagle is no longer involved in this case. You should not
01:08:35 8 draw any inferences for or against any of the remaining parties
01:08:48 9 because of the departure of Giant Eagle.

01:08:54 10 I -- I tweaked that a bit from when I first read it,
01:08:57 11 Your Honor.

01:08:57 12 THE COURT: All right. That's fine.

01:09:00 13 MR. LANIER: The plaintiffs have no objection,
01:09:01 14 Your Honor.

01:09:02 15 THE COURT: Okay. Thank you for the suggestion,
01:09:03 16 I'll -- I will give that instruction.

01:09:12 17 Okay. And you can bring the jury in please.

01:09:16 18 MR. DELINSKY: Your Honor, may I just address a brief
01:09:18 19 housekeeping matter before then?

01:09:19 20 THE COURT: Okay.

01:09:19 21 MR. DELINSKY: We have for the duration of trial been
01:09:22 22 sitting in seats where we can't see the witness. We don't need
01:09:24 23 to move today since it's only been --

01:09:27 24 THE COURT: Anyone can --

01:09:28 25 MR. DELINSKY: Could we move starting tomorrow?

01:09:30 1 THE COURT: Yeah. You can go into that table.

01:09:31 2 MR. DELINSKY: Okay. Thank you, Your Honor.

01:09:32 3 THE COURT: Okay. All right.

01:09:40 4 (Brief pause in proceedings).

01:11:25 5 (Jury returned to courtroom at 1:11 p.m.)

01:11:25 6 THE COURT: Good afternoon. Please be seated.

01:11:28 7 All right. Ladies and gentlemen, I'm advising you
01:11:34 8 that Giant Eagle is no longer part of this case. You should
01:11:38 9 not consider that fact nor should you speculate about the
01:11:43 10 reasons why Giant Eagle is no longer involved in this case.
01:11:47 11 You should not draw any inferences for or against any of the
01:11:50 12 remaining parties because of the departure of Giant Eagle.

01:11:56 13 All right. The plaintiffs having rested. Now it is
01:12:00 14 time for the defendants' case, or cases, plural.

01:12:07 15 You should give the defendants and their witnesses the
01:12:09 16 same terrific attention that you've been giving to all of the
01:12:20 17 plaintiffs' witnesses.

01:12:21 18 Okay. Who wants to proceed?

01:12:24 19 MR. DELINSKY: I'm just looking at Mr. Weinberger and
01:12:29 20 Mr. Lanier, did -- I don't -- are you ready for us to go?

01:12:33 21 MR. LANIER: Oh, yeah. Your Honor, formally, pursuant
01:12:38 22 to putting in exhibits and housekeeping, we rest.

01:12:42 23 THE COURT: I think you rested -- all right. Maybe --

01:12:45 24 MR. LANIER: For clarity sake, we rest.

01:12:48 25 THE COURT: The plaintiffs have rested subject to the

01:12:49 1 admission of exhibits, so it's time for the defense case.

01:12:52 2 Okay.

01:12:54 3 MR. DELINSKY: Good afternoon, ladies and gentlemen.
01:12:55 4 Again, Eric Delinsky on behalf of CVS. The defense will now
01:13:01 5 start its case.

01:13:02 6 Our first witness is an official with the United
01:13:07 7 States Food and Drug Administration which has been referred to
01:13:10 8 throughout the case as the FDA. Unfortunately, it's not a live
01:13:15 9 witness, it's another one of those depositions. I'm sorry
01:13:20 10 about that. This one only runs about 1 hour in length for the
01:13:26 11 questions from the defendants and the questions from the
01:13:30 12 plaintiffs.

01:13:30 13 And let me introduce the witness to you. Her name is
01:13:36 14 Miss Theresa Toiga. She is the associate director of drug
01:13:42 15 safety operations for the US FDA.

01:13:50 16 Oh, yes, and she works in the FDA Center For Drug
01:13:57 17 Evaluation and Research within the office of new drugs.
01:13:59 18 There's apparently a lot of bureaucracy in the FDA.

01:14:03 19 As you will hear, she's been with FDA since 1984.
01:14:08 20 She's been in her current role since 2010, and she was
01:14:12 21 authorized by the FDA to provide deposition testimony in this
01:14:17 22 case on certain topics.

01:14:21 23 THE COURT: Okay. Thank you, Mr. Delinsky.

24

25

—Toiga (By Video Deposition)—

01:14:21 1 DEPOSITION TESTIMONY OF THERESA TOIGA

01:14:31 2 Q. Good morning, Ms. Toiga. My name is Graeme Bush. We
01:14:36 3 introduced each other off the record, and as you heard, I'm
01:14:38 4 counsel for CVS and I will be taking your testimony here today?

01:14:43 5 Can you take a look at Exhibit 20?

01:14:57 6 A. Okay.

01:14:57 7 Q. Have you seen that before?

01:14:58 8 A. Yes, I have.

01:14:59 9 Q. Okay. And this is what's known as a *Touhy* letter, is
01:15:03 10 that -- do you understand that this is what it is called?

01:15:07 11 A. Yes, I do.

01:15:08 12 Q. And does this authorize you to testify -- it's an
01:15:14 13 authorization for you to testify from the Food and Drug
01:15:19 14 Administration on certain topics; is that right?

01:15:22 15 A. Yes.

01:15:23 16 Q. And those topics are listed on Page 2 of Exhibit 20?

01:15:29 17 A. Yes, they are.

01:15:35 18 Q. And they include the roles and responsibilities of FDA and
01:15:38 19 its organizational structure; FDA's role, responsibility, and
01:15:42 20 processes for approving prescription drugs; FDA's role,
01:15:46 21 responsibility, and processes for monitoring approved drugs;
01:15:49 22 and FDA's approval and monitoring of opioids, benzodiazapines
01:15:55 23 and muscle relaxers; is that right?

01:15:56 24 A. Yes.

01:16:01 25 Q. And we have been informed that you are knowledgeable about

—Toiga (By Video Deposition)—

01:16:08 1 these subjects.

01:16:10 2 Are you?

01:16:14 3 A. Yes.

01:16:16 4 Q. What's the basis of your knowledge?

01:16:20 5 A. I've worked at FDA in this -- in the Center For Drugs since
01:16:26 6 2010. I've worked at FDA since 1984 in various roles, so I
01:16:36 7 have an understanding of its organization and its roles and
01:16:38 8 responsibilities.

01:16:40 9 Q. What was your first job at FDA?

01:16:44 10 A. Consumer safety officer.

01:16:46 11 Q. And what office within FDA was that position in?

01:16:54 12 A. It was in the Office of New Drugs. I believe that's what
01:16:58 13 it was called in 1984.

01:17:01 14 Q. So what were the general responsibilities of the Office of
01:17:04 15 New Drugs at that point in time in 1984?

01:17:08 16 A. To review and approve and monitor the safety of new drug --
01:17:13 17 of prescription drug products, over-the-counter products.

01:17:19 18 Q. Where is that functioning located now in FDA?

01:17:23 19 A. It's within the office -- the Center For Drug Evaluation
01:17:27 20 and Research within the Office of New Drugs.

01:17:30 21 Q. And is the -- is that center known by its acronym, CDER?

01:17:37 22 A. Yes.

01:17:37 23 Q. Is that where you work now?

01:17:39 24 A. Yes, I do.

01:17:46 25 Q. When did you begin working at CDER?

—Toiga (By Video Deposition)—

01:17:55 1 A. 2010.

01:17:56 2 Q. What was your position when you started?

01:17:57 3 A. My current position, associate director of drug safety
01:18:01 4 operations.

01:18:05 5 Q. So can you give us a general account of what CDER's
01:18:11 6 responsibilities are within FDA?

01:18:15 7 A. CDER is responsible for the -- monitoring the public health
01:18:22 8 and the safety related -- safety and approval of new drugs. So
01:18:27 9 we review new drugs, we review drugs, we approve drugs, and we
01:18:31 10 monitor their safety after approval.

01:18:37 11 Q. And what kinds of backgrounds -- I assume there's a variety
01:18:40 12 of different backgrounds that people employed at CDER have, but
01:18:44 13 in general, what are the different kind of backgrounds that
01:18:46 14 people have?

01:18:46 15 A. There are medical officers. There are pharmacologists,
01:18:51 16 toxicologists, statisticians, pharmacists, chemists,
01:19:00 17 microbiologists, and a variety of administrative personnel.
01:19:04 18 There is project management specialists. There's lawyers.
01:19:11 19 There's many, many people doing a lot of different things.

01:19:14 20 Q. Am I correct that the FDA is responsible in the United
01:19:21 21 States for approving any drug before it can be prescribed,
01:19:28 22 marketed, dispensed, and sold?

01:19:33 23 A. Yes. That's FDA's responsibility.

01:19:37 24 Q. Does FDA review and approve opioids?

01:19:45 25 A. Yes.

—Toiga (By Video Deposition)—

01:19:46 1 Q. Does it review and approve benzodiazapines?

01:19:54 2 A. Yes.

01:19:54 3 Q. Does it approve -- review and approve muscle relaxers?

01:19:57 4 A. Yes.

01:20:03 5 Q. What is -- what does the FDA need to do, what is the

01:20:06 6 conclusion it needs to reach in order to approve a drug?

01:20:15 7 A. It's a benefit/risk assessment, and the benefits of the

01:20:20 8 drugs outweigh its risks.

01:20:23 9 Q. Does it have to conclude that the drug is effective to

01:20:27 10 treat whatever condition it's proposed to treat?

01:20:34 11 A. It approves that it's effective at -- for the indication

01:20:38 12 approved in the labeling, yes.

01:20:40 13 Q. And it indicate -- where's the indication in the labeling

01:20:44 14 come from, from the applicant or some other place?

01:20:49 15 A. Studies are done. FDA reviews the studies to determine

01:20:54 16 whether they've met the standards or safe -- a safe and

01:20:59 17 effective drug.

01:21:02 18 Q. All right. That was -- that was the other question I was

01:21:04 19 going to ask you. Is part of this approval -- does part of

01:21:08 20 this approval involve making a determination that the drug is

01:21:11 21 safe if used as indicated on the label?

01:21:18 22 A. Yes. As described in the label, with warnings,

01:21:25 23 precautions, yes.

01:21:33 24 Q. And I think you already mentioned the risk and benefit

01:21:36 25 analysis. Can you describe what that entails for the FDA to

—Toiga (By Video Deposition)—

01:21:42 1 approve a prescription drug?

01:21:44 2 A. Yes. FDA reviews the clinical data to determine that the

01:21:50 3 drug is effective, and then it looks at the data that's

01:21:54 4 associated with adverse events that occur during a clinical

01:21:59 5 trial. It looks at where -- where -- what therapist are

01:22:04 6 available for any -- for -- a particular condition. It's part

01:22:14 7 of a benefit/risk assessment that is described in a document

01:22:20 8 that is available, and it has a list of questions and

01:22:24 9 considerations that reviewers take into account when helping to

01:22:29 10 decide whether the benefits outweigh the risks.

01:22:34 11 Q. And in that process, does it consider possible side effects

01:22:37 12 from the use of the drug?

01:22:39 13 A. Yes, it does.

01:22:41 14 Q. Does it consider potential interactions with other drugs?

01:22:48 15 A. It does, to the extent that they're known.

01:22:52 16 Q. Does --

01:22:53 17 A. They do describe --

01:22:56 18 Q. All right. Didn't mean to interrupt you.

01:22:59 19 A. They do describe -- those drug interactions would be

01:23:03 20 described in the labeling.

01:23:05 21 Q. And does it consider potential interactions with other

01:23:10 22 substances, like alcohol or perhaps other substances that

01:23:14 23 somebody might take that aren't drugs?

01:23:18 24 A. Yes.

01:23:24 25 Q. Does the risk/benefit analysis consider the effects that

—Toiga (By Video Deposition)—

01:23:31 1 could come from people taking the drug in ways that it was not
01:23:36 2 prescribed or indicated for?

01:23:40 3 A. Yes, when -- when that's known.

01:23:45 4 Q. Does -- in the risk/benefit analysis, does the FDA take
01:23:49 5 into account risks to public health?

01:23:55 6 A. Yes, it does. That's part of our analysis.

01:23:58 7 Q. And are those risks -- do those risks including risks that
01:24:03 8 come from inappropriate use of the drug?

01:24:08 9 A. When that's known, yes.

01:24:12 10 Q. And does -- does it also take into account the impact on
01:24:22 11 public health from the potential nonmedical use of the drug?

01:24:30 12 A. When that's known, that's described in our guidance, how
01:24:33 13 we -- we've -- if it's known for the particular therapeutic
01:24:38 14 class.

01:24:39 15 Q. And with respect to opioids in particular, does the FDA
01:24:43 16 take into account these types of impacts on public health that
01:24:47 17 I've just asked you about?

01:24:50 18 A. Yes, that is described in our guidance.

01:24:57 19 Q. And on the benefit side, I think you mentioned that -- some
01:25:06 20 of the things that are considered, but one of them would be the
01:25:09 21 conditions that the drug addresses or treats; is that right?

01:25:15 22 A. Yes.

01:25:16 23 Q. Would it also include whether there are alternative
01:25:19 24 treatments available for that condition?

01:25:22 25 A. Yes.

—Toiga (By Video Deposition)—

01:25:23 1 Q. When it's considering the benefits in weighing the risks
01:25:27 2 and benefits, does it take account of how effective the drug is
01:25:33 3 in treating whatever condition it's indicated for?
01:25:38 4 A. Yes. That's part of the risk/benefit determination.
01:25:43 5 Q. Does the approval also include approval of the labeling and
01:25:52 6 package inserts for a drug?
01:25:55 7 A. Yes, that's part of the approval process.
01:25:58 8 Q. Okay. Does it include information about the recommended
01:26:05 9 doses?
01:26:08 10 A. Yes, it does.
01:26:09 11 Q. Does it include information about the starting dose that's
01:26:14 12 recommended?
01:26:17 13 A. Yes, generally.
01:26:20 14 Q. Does it include recommendations about the duration of use
01:26:26 15 of the drug?
01:26:30 16 A. Generally.
01:26:35 17 Q. Does it include information about the monitoring of the
01:26:42 18 patient during the time the drug is being taken?
01:26:49 19 A. Yes.
01:26:57 20 Q. And, specifically, with respect to opioid drugs -- and I'm
01:27:01 21 talking about as a class now, not any particular opioid drug --
01:27:05 22 are all those factors part of the labeling that the FDA reviews
01:27:12 23 and approves?
01:27:16 24 A. They are. The labeling is revised as FDA gets additional
01:27:28 25 information, so there's labeling and approval and there's

—Toiga (By Video Deposition)—

01:27:31 1 labeling at any point in time.

01:27:33 2 Q. All right. Now, I think you said before that one of the
01:27:36 3 things or subjects that might be in a label are warnings and
01:27:41 4 information from clinical trials.

01:27:43 5 With respect to opioids, are warnings a part of the
01:27:49 6 labeling, again, opioids as a class?

01:27:52 7 A. Yes.

01:27:54 8 Q. And is information from clinical trials with respect to any
01:28:05 9 opioid also a part of the labeling?

01:28:10 10 A. Yes.

01:28:11 11 Q. If there's a general description of what kinds of -- what
01:28:14 12 we mean or what you mean when you're talking about clinical
01:28:17 13 information, I would appreciate it if you could tell the jury
01:28:22 14 about it.

01:28:25 15 A. The labeling will describe the clinical trials that were
01:28:30 16 conducted to support the approval of the drug, so it will
01:28:35 17 describe the number of trials, the patients that were included
01:28:38 18 in the trials, what was found in the trials, how long the
01:28:43 19 trials lasted. It will -- they'll be a full description of the
01:28:48 20 adverse events that were observed during the trial. If some of
01:28:52 21 those adverse events are serious, they'll be described in
01:28:56 22 varying levels in the labeling between warnings and
01:29:01 23 precautions, adverse events, boxed warnings. It depends.

01:29:07 24 Q. What is a boxed warning?

01:29:11 25 A. A boxed warning is a -- describe a -- generally, a serious

—Toiga (By Video Deposition)—

01:29:19 1 adverse event. It's one that we think -- that FDA believes
01:29:23 2 that if a healthcare provider may be able to prevent an adverse
01:29:30 3 event, if that's described in the labeling -- we have a
01:29:32 4 guidance that describes it. I think there's three criteria.
01:29:35 5 And I could find it and read it to you, but it's -- I don't --
01:29:38 6 I can't -- I don't know the exact three criteria. But it's the
01:29:42 7 highest level of concern about a particular adverse event.

01:29:47 8 Q. And what is the -- withdrawn.

01:29:50 9 The information in the label, or on the label, that is
01:29:58 10 available to a prescriber; is that right?

01:30:02 11 A. Yes, it is.

01:30:04 12 Q. And a package insert, that's different from the label.

01:30:08 13 Is that also right?

01:30:10 14 A. The prescribing information is in the package insert.
01:30:16 15 That's part of the labeling of the drug. A labeling is another
01:30:20 16 piece of that component. I'm at -- a lawyer is probably better
01:30:26 17 and is able to describe all of the different components of
01:30:29 18 labeling, but prescribing information is a package insert, and
01:30:36 19 the prescribing information is what FDA approves.

01:30:40 20 Q. And the prescribing information on the package insert is
01:30:43 21 available to a prescriber who's deciding whether or not to
01:30:46 22 prescribe any particular drug; is that right?

01:30:50 23 A. Yes.

01:30:51 24 Q. Including opioids?

01:30:53 25 A. Including opioids.

—Toiga (By Video Deposition)—

01:30:55 1 Q. And what is a medication guide? I just want to make sure

01:30:59 2 I --

01:31:00 3 A. Medication -- a medication guide is -- is when there's
01:31:06 4 particular risks that FDA thinks would be important to convey
01:31:11 5 to a patient, those risks are described. And, again, the
01:31:16 6 specifics are described in the regulations, what's required to
01:31:19 7 be included in a med guide. But it's really to help ensure the
01:31:23 8 safe use of the drug for a patient. It's written -- some are
01:31:28 9 better than others in terms of understanding -- you know, it's
01:31:32 10 understandable language to the patient.

01:31:39 11 Q. And that medication guide, if there is one for a particular
01:31:44 12 drug, is available to the patient when the patient picks up a
01:31:49 13 prescription?

01:31:49 14 A. Yes.

01:31:51 15 Q. And that's true for opioids as well as other drugs, other
01:31:54 16 prescription drugs?

01:31:56 17 A. Yes.

01:31:58 18 Q. So would it be accurate to say that the FDA has concluded
01:32:08 19 that -- and again, I'm talking about the class, the class of
01:32:11 20 opioids -- are -- they're effective to treat the conditions
01:32:18 21 that are specified in the application?

01:32:23 22 A. Yes.

01:32:25 23 Q. And the FDA has also, again, for the class of opioids,
01:32:31 24 concluded that opioids are safe when used to treat the
01:32:35 25 conditions that are specified in the -- on the label?

—Toiga (By Video Deposition)—

01:32:41 1 A. Yes.

01:32:42 2 Q. The FDA has made the determination that the benefits of
01:32:47 3 opioids as a class outweigh the risk that they pose?

01:32:52 4 A. That's correct.

01:32:53 5 Q. Now, after a drug has been approved by the FDA, I think
01:32:58 6 you've already mentioned this, but there's a role that FDA has
01:33:01 7 in monitoring the drug after it's on the market; is that right?

01:33:06 8 A. Yes.

01:33:06 9 Q. One of the tools that the FDA has is the FDA Adverse Event
01:33:13 10 Reporting System; is that right?

01:33:15 11 A. Yes, FAERS.

01:33:17 12 Q. FAERS, right. And how does FAERS work?

01:33:22 13 A. FAERS is a voluntary -- healthcare practitioners submit on
01:33:31 14 adverse events to FAERS. Consumers can submit adverse event to
01:33:36 15 FAERS. Manufacturers are required under the regulations to
01:33:40 16 submit on a certain adverse events report -- event reports of
01:33:45 17 serious and unexpected adverse events. There's specifications
01:33:49 18 or industry. And then for healthcare professionals and
01:33:53 19 patients it's a voluntarily system.

01:33:54 20 Q. What does FDA do with the FAERS reports it receives?

01:34:03 21 A. Our safety evaluators review the adverse event reports that
01:34:07 22 are submitted.

01:34:07 23 Q. And what do they do after they review them? I know it
01:34:14 24 depends, but in general, what do they do?

01:34:16 25 A. Right. They're reviewing to determine whether or not the

—Toiga (By Video Deposition)—

01:34:19 1 labeling needs to be updated, whether there's a change in the
01:34:22 2 adverse event, whether there's a change in the safety profile
01:34:27 3 of the drug, whether we need to, you know, reevaluate where --
01:34:37 4 where -- what -- what our -- the benefit/risk assessment for a
01:34:44 5 particular drug.

01:34:47 6 Q. Would it be accurate to say this is one way to gather
01:34:50 7 information about the effects of the drug, including risks or
01:34:56 8 benefits that were not available to FDA at the time that the
01:35:00 9 drug application was approved?

01:35:04 10 A. Yes. That's one way of gathering information after
01:35:08 11 approval.

01:35:11 12 Q. What other ways are there? And, again, at this point, I'm
01:35:16 13 just asking in general. What other ways does the FDA have to
01:35:19 14 gather post-approval information about how the drug is being
01:35:22 15 used and what its impact is?

01:35:24 16 A. FDA reviewers read the literature, so there may be
01:35:28 17 published studies. The manufacturers submit annual reports, so
01:35:33 18 there -- they may submit some of the same publications. They
01:35:38 19 may submit summary safety reports. It's an ongoing evaluation
01:35:47 20 of the safety of the drug after marketing.

01:35:50 21 Q. Okay. Do you recall that FDA was asked to help implement a
01:35:56 22 national PDMP program and decided not to do that?

01:36:05 23 A. In that public -- was that in the public meeting, that
01:36:10 24 discussion about a -- a -- I believe that was a
01:36:13 25 recommendation -- one of the proposals that was made during

—Toiga (By Video Deposition)—

01:36:16 1 that public meeting.

01:36:17 2 Q. And did the FDA decide not to pursue that through an REMS?

01:36:26 3 A. That -- yes. Correct.

01:36:28 4 Q. Has the FDA received any citizens' petitions with regard to
01:36:33 5 opioids?

01:36:35 6 A. Yes.

01:36:42 7 Q. And are you familiar with a request from -- I'm forgetting
01:36:50 8 what the acronym stands for. Are you familiar with an
01:36:53 9 organization called -- the acronym is PROP?

01:36:57 10 A. Yes.

01:36:59 11 Q. Did the FDA receive a citizen petition from PROP?

01:37:07 12 A. Yes.

01:37:08 13 Q. Can I ask you to take a look at exhibit -- it's been
01:37:13 14 premarked Exhibit 10. And -- well, I guess you have the hard
01:37:16 15 copy so you can rifle through it to make sure you know what
01:37:21 16 it's about.

01:37:21 17 But is this the FDA's decision on the citizens'
01:37:26 18 petition from physicians for responsible opioid prescribing,
01:37:31 19 for PROP?

01:37:32 20 A. Yes, it is.

01:37:41 21 Q. And the -- let me ask you to take a look at Page 11 of the
01:37:49 22 document.

01:37:50 23 Are you there?

01:37:51 24 A. Yes, um-hmm.

01:37:52 25 Q. At the bottom of the page it says, the agency declines to

—Toiga (By Video Deposition)—

01:37:55 1 specify or recommend a maximum daily dose or duration of use
01:37:59 2 for any opioid at this time.

01:38:01 3 Did PROP propose that the FDA impose a maximum daily
01:38:09 4 dosage limit?

01:38:12 5 Let me ask you this. Independently of -- first of
01:38:16 6 all, do you recognize this document?

01:38:17 7 Did you ever see the decision of the FDA on the PROP
01:38:21 8 citizens' petition?

01:38:22 9 A. Yes, I did.

01:38:24 10 Q. And is this the decision? I thought you said -- testified
01:38:29 11 it is, but is this the decision?

01:38:32 12 A. If -- if this was our response to the petition, this is our
01:38:36 13 decision.

01:38:39 14 Q. Well, I direct your attention -- I'm sorry to make you go
01:38:42 15 back to the first page, but I'd ask you to go back to the first
01:38:45 16 page.

01:38:45 17 But the first sentence says, this letter responds to
01:38:49 18 the citizens' petition submitted by physicians for responsible
01:38:53 19 opioid prescribing, PROP, which was received by FDA on
01:38:57 20 July 26th, 2012?

01:39:00 21 So. . . this is the decision, isn't it?

01:39:03 22 A. Yes, this was FDA's response to the citizen petition.

01:39:08 23 Q. Let me direct your attention to the bottom of Page 11.

01:39:12 24 It says, PROP requests that FDA add a maximum daily
01:39:15 25 goes of the equivalent of 100 milligrams of morphine,

—Toiga (By Video Deposition)—

01:39:23 1 100-milligram morphine equivalent dose, MED, to opioids
01:39:29 2 (petition at 2).

01:39:30 3 Do you understand that sometime in 2012 PROP had asked
01:39:35 4 for a maximum daily dose, as it's set forth in this document?

01:39:43 5 A. Yes, I recall the PROP petition.

01:39:47 6 Q. But let me direct your attention to Page -- the first
01:39:51 7 sentence under Section 4.

01:39:53 8 The agency declines to specify or recommend a maximum
01:39:57 9 daily dose or duration of use for any opioid at this time for
01:40:00 10 the reason described below.

01:40:03 11 Does that refresh your recollection about what FDA did
01:40:07 12 with respect to the request in the PROP citizens' petition to
01:40:12 13 set a maximum daily dose?

01:40:19 14 A. I remember the petition and the response, yes.

01:40:24 15 Q. Take a look at Exhibit 15, if you would. And let me know
01:40:38 16 when you have the document.

01:40:40 17 A. I have the document.

01:40:41 18 Q. This appears to be a letter from the FDA to Senator Maggie
01:40:50 19 Hassan. And my first question is, have you seen this document
01:40:57 20 before?

01:40:58 21 A. Yes, I have.

01:41:08 22 Q. Did you work on it or provide any input to it?

01:41:11 23 A. I did.

01:41:15 24 Q. Would you take a look at Page 13, and I'd like to direct
01:41:19 25 your attention to the second full paragraph.

—Toiga (By Video Deposition)—

01:41:26 1 It says, FDA has expressed concerns about the use of a
01:41:29 2 specific dose of opioids as a bright line to identify risk.

01:41:39 3 A. I'm reading the paragraph.

01:41:41 4 Q. Is it your recollection that FDA had concerns about
01:41:45 5 specifying a bright line dosage limit for opioids?

01:41:52 6 A. Yes.

01:41:56 7 Q. And it says further at the bottom, in other words, factors
01:42:00 8 such as mental health diagnoses or family history of substance
01:42:04 9 abuse may be more closely related to risk of overdose than the
01:42:07 10 dose a patient is taking.

01:42:11 11 Do you recall that that was FDA's view at the time
01:42:14 12 they sent this letter to Senator Hassan?

01:42:21 13 A. This isn't a final letter. I didn't work on this
01:42:23 14 particular part of it.

01:42:24 15 Q. Did you recall that this was the FDA's position, whether
01:42:27 16 you worked on this language or not?

01:42:32 17 A. I -- yes.

01:42:33 18 Q. And the -- was it your understanding that this position was
01:42:37 19 based on a review of the data? And I refer you to the second
01:42:41 20 sentence of the paragraph, our review of the data.

01:42:49 21 A. This would have been the review by epidemiologists, yes,
01:42:54 22 and the clinical team.

01:42:56 23 Q. One of the tools that FDA has post-approval is to remove
01:43:02 24 drugs, including opioids, from the market if post-approval data
01:43:07 25 suggests that's the right thing to do?

—Toiga (By Video Deposition)—

01:43:10 1 A. Yes.

01:43:12 2 Q. And that would be if post-approval data suggests that the
01:43:17 3 risk/benefit analysis that was made at the time of approval
01:43:22 4 needs to be reconsidered and perhaps the risks outweigh the
01:43:25 5 benefits; is that right?

01:43:26 6 A. That's correct.

01:43:28 7 Q. And has FDA ever removed any opioid drugs that it had
01:43:33 8 previously approved?

01:43:35 9 A. Yes, it has.

01:43:37 10 Q. And FDA has not sought to remove oxycodone from the market,
01:43:48 11 is that right?

01:43:48 12 A. No. Correct.

01:43:49 13 Q. It's not right or it's not correct?

01:43:51 14 A. FDA has not sought to remove oxycodone from the market.

01:43:56 15 Q. And it also hasn't sought to remove hydrocodone from the
01:44:01 16 market?

01:44:03 17 A. We have not sought to remove hydrocodone from the market.

01:44:06 18 Q. Including hydrocodone combination products; is that right?

01:44:12 19 A. That's right.

01:44:14 20 Q. Has the FDA considered whether opioids are appropriate to
01:44:22 21 use for the treatment of chronic pain?

01:44:29 22 A. I don't actually know what the current labeling says. I'd
01:44:34 23 have to look at see what the currently labeling says, but we --
01:44:39 24 FDA -- opioids are used for chronic pain.

01:44:47 25 Q. And has FDA, to your knowledge, ever made a determination

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01:44:50 1 that they're not appropriate for -- to use to treat chronic
01:44:55 2 pain?

01:44:56 3 A. No, not that I'm aware.

01:45:07 4 Q. Let's go -- look back at Exhibit 10, which we were looking
01:45:13 5 at before.

01:45:13 6 This is the FDA letter responding to the PROP citizen
01:45:18 7 petition, and I want to direct your attention to Page 14.

01:45:24 8 And I guess before I ask you about that specific page,
01:45:32 9 has any, I'll call them, stakeholders come to the FDA and asked
01:45:37 10 that it restrict the use of opioids to preclude the
01:45:44 11 treatment -- use of opioids to treat chronic pain?

01:45:53 12 A. I believe so, but I -- I -- it's a topic of a lot of
01:45:57 13 discussion. I don't -- I don't remember specifically who has
01:46:03 14 asked us to -- to do something.

01:46:11 15 Q. So let me direct your attention to Page 14.

01:46:14 16 It says, the PROP petition requests that FDA add a
01:46:18 17 maximum duration of 90 days for a continuous daily use.

01:46:27 18 And it then goes on to say that, after review of the
01:46:33 19 literature cited in the petition and an assessment of other
01:46:36 20 relevant information discussed below, FDA has determined that
01:46:39 21 limiting the duration of use for opioid therapy to 90 days is
01:46:44 22 not supportable. Thus, the agency denies this request.

01:46:51 23 Do you recall that that was the agency's decision on
01:46:58 24 PROP's request that there be a maximum duration of 90 days for
01:47:04 25 daily use of opioid medications?

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01:47:09 1 A. That was our response in this petition, so that was our
01:47:12 2 position.

01:47:13 3 Q. And to your knowledge, has FDA, since that time, in 2013,
01:47:24 4 limited the use -- the daily use of opioid medications to
01:47:34 5 90 days or less?

01:47:38 6 A. No. FDA has not revised the labeling, to my knowledge,
01:47:44 7 that changed anything on -- that -- to add this to the
01:47:49 8 labeling.

01:47:49 9 Q. This appears to be the FDA's response to a citizen petition
01:47:53 10 from Pharmaceutical Manufacturing Research Services.

01:48:00 11 Is that what it is?

01:48:02 12 A. Yes, it is.

01:48:03 13 Q. And have you seen this document before?

01:48:14 14 A. No. I don't think I've seen this specific response.

01:48:17 15 Q. So going back to this, and I get that you maybe don't
01:48:22 16 recall the specific petitions, but -- so let me see if I can
01:48:29 17 just wrap this up at this point.

01:48:31 18 Are you aware of the FDA granting any citizen's
01:48:42 19 petition that suggested that FDA stop approving new drug
01:48:47 20 applications for opioids with an indication to treat chronic
01:48:51 21 pain?

01:48:55 22 A. No, not to my recollection.

01:48:58 23 Q. I guess let me ask one other question. I used the
01:49:02 24 language, management of moderate to severe pain when a
01:49:05 25 continuous around the clock analgesic is needed for an extended

—Toiga (By Video Deposition)—

01:49:09 1 period of time.

01:49:10 2 Is that the kind of technical language that is used to
01:49:14 3 describe treatment for chronic pain?

01:49:17 4 A. I believe that's in our -- in the current labeling.

01:49:25 5 Q. So going back to the general topic of what's in FDA's
01:49:28 6 toolbox post-approval for opioids to monitor and take actions
01:49:32 7 when appropriate with respect to already approved opioids, I --
01:49:37 8 is it -- is it accurate to say that one of the tools is to
01:49:41 9 issue warning letters if manufacturers are minimizing safety
01:49:46 10 risks in marketing or in promotional labeling?

01:49:51 11 A. Yes, that's a tool.

01:49:53 12 Q. Okay. And is that a tool that the FDA has used from time
01:50:00 13 to time with respect to opioids?

01:50:02 14 A. Yes, we have.

01:50:04 15 Q. And is issuing a public health advisory when there are
01:50:09 16 concerns based on the experience with the drug after it's been
01:50:13 17 approved one of the tools in the toolbox?

01:50:17 18 A. Are you referring to a drug safety communication?

01:50:23 19 Q. That would be one, yeah.

01:50:25 20 A. Yes, we use drug safety communications.

01:50:30 21 Q. On --

01:50:31 22 A. To -- to inform mostly healthcare providers and patients
01:50:37 23 about safety issues.

01:50:40 24 Q. Okay. Has the FDA issued any drug safety communication
01:50:44 25 with respect to any opioid medications?

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01:50:47 1 A. Yes, we have.

01:50:49 2 Q. And how does the FDA come to a decision whether to issue a
01:50:58 3 safety communication?

01:51:01 4 A. So when FDA receives -- identifies a safety signal, a
01:51:09 5 safety issue, generally a multi-disciplinary team is looking at
01:51:16 6 the data. They are determining whether there is a safety
01:51:23 7 concern about -- for which either we're looking at and going to
01:51:28 8 have to get more information, and that might be an early drug
01:51:33 9 safety communication, but we think it's important enough to let
01:51:36 10 the public know, or it might be after we've done a complete
01:51:39 11 evaluation and then we have -- we know the answer, or based on
01:51:44 12 the information available at that time, and we'll issue a drug
01:51:47 13 safety communication to convey the information to the public.
01:51:53 14 Mostly -- there is -- if the -- the drug safety communications
01:51:56 15 have a section for healthcare providers and a section for
01:52:00 16 patients.

01:52:01 17 Q. Okay. And what's the process that the FDA goes through
01:52:05 18 that leads to the issuance of a warning letter?

01:52:11 19 A. I'm not as familiar with the details of that because I
01:52:15 20 haven't worked in that area, but basically most of the warning
01:52:19 21 letters -- are you referring to the -- those issued through the
01:52:23 22 Office of Prescription Drug Promotion?

01:52:28 23 Is that the warning letters you're -- for advertising?

01:52:31 24 Q. Yes.

01:52:32 25 A. So as the FDA gathers information from a variety of sources

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01:52:38 1 and determines whether or not there's a violation -- again, I'm
01:52:44 2 not a lawyer, but the -- it's described in a warning letter
01:52:50 3 what the issues were that were identified.

01:52:52 4 Q. To whom does the warning letter go, again, generically.
01:52:56 5 I'm not asking about any particular warning letter.

01:52:59 6 A. To the manufacturer, the application holder.

01:53:02 7 Q. Is one of the tools in the toolbox post-approval to require
01:53:09 8 changes in the labeling for drugs that have already been
01:53:11 9 approved?

01:53:12 10 A. Yes, it is.

01:53:13 11 Q. And is there such a thing as a classwide labeling change?

01:53:20 12 A. Yes.

01:53:21 13 Q. Has the FDA issued a classwide labeling change with respect
01:53:24 14 to opioids?

01:53:26 15 A. Yes, we have.

01:53:29 16 Q. One? More than one? What? How many?

01:53:34 17 A. I -- I don't know how many. I know -- I believe one in
01:53:38 18 2013, and I think one in 2016, and probably more, but I -- I --
01:53:47 19 you know, I just -- I don't -- I can't answer that, how many.

01:53:50 20 Q. Okay. And do you recall what the class labeling change was
01:54:01 21 in 2016? I think you said there was one around then.

01:54:05 22 A. I believe it was to put a boxed warning on the
01:54:08 23 immediate-release opioid -- opioid drugs.

01:54:30 24 I may have my dates wrong, but there was a classwide
01:54:33 25 labeling change for the boxed warning on immediate release.

—Toiga (By Video Deposition)—

01:54:37 1 Q. Do you recall that there was a classwide labeling change in
01:54:40 2 2020, this year, regarding prescriptions of naloxone for people
01:54:49 3 with opioid use disorder?

01:54:54 4 A. Yes.

01:54:54 5 Q. What's the purpose of the labeling changes? What does FDA
01:54:59 6 expect to happen when a labeling change is made?

01:55:03 7 A. It's to provide information to the prescribers and
01:55:13 8 healthcare providers to use the drug safely and for the -- you
01:55:21 9 know, it describes the uses for which FDA has data to show how
01:55:25 10 the drug was effective, but there's a lot of information
01:55:28 11 related to using the drug safely.

01:55:31 12 Q. To your knowledge, is the FDA aware of risks that come from
01:55:38 13 prescriptions of the combinations of opioids and benzos and/or
01:55:46 14 muscle relaxers?

01:55:47 15 A. Yes, it's described in the labeling.

01:56:02 16 Q. And is the labeling that has been approved by FDA that
01:56:04 17 describes those risks a result of a process to analyze what
01:56:11 18 those risks are?

01:56:13 19 A. Yes.

01:56:15 20 Q. You can answer. I mean, if yes is your answer, that's
01:56:19 21 fine.

01:56:20 22 A. Yes. I mean, one of them was in a classwide labeling
01:56:25 23 change.

01:56:27 24 Q. Do you recall when that was?

01:56:30 25 A. I think that one was in 2016 as well, and then there was

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01:56:36 1 another one in 2020.

01:56:47 2 Q. My name is Hunter Shkolnik. I'm with the law firm Napoli
01:56:47 3 Shkolnik.

01:56:54 4 Ms. Toiga, I understand you've been with FDA for it
01:56:57 5 seems like your whole career, like, from school on.

01:57:01 6 Am I correct?

01:57:03 7 A. Most of it.

01:57:04 8 Q. As a life-timer at the FDA, would it be fair to say you
01:57:10 9 have seen a lot happen between the '80s and what's going on
01:57:15 10 today in 2020 at FDA? You've seen a lot of changes and a lot
01:57:21 11 of drugs and go, so to speak; correct?

01:57:25 12 A. Correct.

01:57:26 13 Q. Have you ever heard the phrase "opioid epidemic" utilized?

01:57:33 14 A. Yes.

01:57:34 15 Q. Why don't you tell the Court -- and this is something we do
01:57:38 16 because your testimony is going to be used at trial.

01:57:40 17 Why don't you tell the court and jury what you
01:57:42 18 understand the opioid epidemic to be.

01:57:49 19 A. What I understand it to be is the concerns about the abuse,
01:57:57 20 misuse, overdose, and deaths associated with the use of
01:58:03 21 opioids, and, so, I mean, that's the specifics related from an
01:58:07 22 FDA perspective, but the impact of the misuse and abuse of
01:58:13 23 opioids from a public health -- as a public health concern for
01:58:19 24 the American public.

01:58:20 25 Q. Was there an opioid epidemic in the 1990s when you were at

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01:58:24 1 FDA?

01:58:25 2 A. Not that I'm aware of, no.

01:58:27 3 Q. Something happened in the 1990s and thereafter that
01:58:33 4 developed into an opioid epidemic. Is that a fair statement?

01:58:37 5 A. From an FDA perspective, we -- I mean, we began receiving
01:58:48 6 reports of concerns about opioids in the -- in the '90s, I
01:58:56 7 believe.

01:58:56 8 Q. The latter part of the '90s. Would that be a fair
01:58:59 9 statement?

01:58:59 10 A. Yes.

01:59:00 11 Q. Would I be correct in stating that FDA does not oversee the
01:59:04 12 chain pharmacies?

01:59:08 13 A. FDA does not regulate the chain pharmacies, no.

01:59:15 14 Q. And FDA does not oversee the actual pharmacists in the
01:59:19 15 stores; correct?

01:59:19 16 A. FDA -- that's right.

01:59:23 17 Q. FDA does not determine whether or not a pharmacy properly
01:59:29 18 dispenses these opioids; correct?

01:59:34 19 A. Correct.

01:59:35 20 Q. FDA does not oversee whether or not a distributor properly
01:59:42 21 distributes opioids; correct?

01:59:44 22 A. I believe that's correct, yes.

01:59:46 23 Q. The one thing FDA does do is it approves opioids for use.
01:59:53 24 Fair statement?

01:59:56 25 A. Correct. Yes.

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01:59:57 1 Q. You approve the labeling that goes with the opioids.

02:00:01 2 Fair statement?

02:00:02 3 A. Yes. Yes. Yes.

02:00:04 4 Q. You would approve any changes to labeling of an approved
02:00:09 5 opioid.

02:00:09 6 Fair statement?

02:00:11 7 A. Yes.

02:00:12 8 Q. You have a -- you have an office that would oversee whether
02:00:18 9 or not a manufacturer properly markets their drug within the
02:00:22 10 approval package or labeling; correct?

02:00:26 11 A. Yes.

02:00:28 12 Q. And you have had situations, have you not, over the course
02:00:33 13 of years from the late 1990s up until the late '20 teens where
02:00:41 14 manufacturers of opioids have inappropriately marketed their
02:00:45 15 opioids.

02:00:45 16 Is that a fair statement?

02:00:46 17 A. Yes.

02:00:48 18 UNIDENTIFIED SPEAKER: Objection.

02:00:49 19 THE WITNESS: Based on warning letters.

02:00:51 20 Q. You've had warning letters; correct?

02:00:53 21 A. Yes, and some untitled letters, I believe, but, yes,
02:00:56 22 letters that address your question.

02:00:58 23 Q. And you have also had situations where you have implemented
02:01:06 24 or made changes to the approved labeling over the years for
02:01:11 25 opioids.

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02:01:11 1 Fair statement?

02:01:13 2 A. Yes.

02:01:14 3 Q. And you have had manufacturers who have had approved drugs,
02:01:22 4 opioid drugs, inappropriately market them, been indicted for
02:01:27 5 that and pled guilty for that.

02:01:29 6 Fair statement?

02:01:33 7 A. Yeah.

02:01:36 8 Q. Purdue, in fact, just recently pled guilty for a second
02:01:41 9 time for inappropriate marketing of opioids.

02:01:43 10 Fair statement?

02:01:45 11 A. I believe so. I'm not familiar with the details, but, yes.

02:01:50 12 Q. You're aware they pled guilty in the 2007 time frame,
02:01:59 13 aren't you?

02:02:00 14 A. I can't recall.

02:02:02 15 Q. You're aware that they did plead guilty once before and
02:02:07 16 some of their executives?

02:02:10 17 A. Yes, I believe so.

02:02:11 18 Q. And do you recall that FDA, in early 2000s, around 2001,
02:02:18 19 made Purdue change its labeling and its marketing because of
02:02:23 20 inappropriate marketing of their OxyContin?

02:02:27 21 A. Yes.

02:02:27 22 Q. FDA is limited in what it can do and can't do with respect
02:02:32 23 to the drugs, the opioids you approve once they're on the
02:02:37 24 market.

02:02:37 25 Fair statement?

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02:02:39 1 A. Yes.

02:02:40 2 Q. The limitations are such that you could make
02:02:45 3 recommendations, you can request changes to the label, but it's
02:02:48 4 very difficult to pull a drug that's been approved off the
02:02:53 5 market.

02:02:53 6 Fair statement?

02:02:55 7 A. There is a process for approval of the drug from the
02:02:58 8 market, yes.

02:02:58 9 Q. Very few are ever pulled from the market once approved by
02:03:03 10 FDA.

02:03:04 11 Fair statement?

02:03:04 12 A. Yes.

02:03:05 13 Q. And what FDA does have the power to do is to change or
02:03:10 14 recommend changes to a label once the drug is approved so that
02:03:16 15 the use and the prescription of the drug can be made safer.

02:03:21 16 Fair statement?

02:03:23 17 A. Yes.

02:03:24 18 Q. FDA has done that for the last 20 years with respect to
02:03:30 19 opioids.

02:03:30 20 Fair statement?

02:03:32 21 A. Yes.

02:03:33 22 Q. You've tried to make it safer and safer for both the
02:03:37 23 prescriber to prescribe and the patient to use.

02:03:42 24 Fair statement?

02:03:44 25 A. Yes.

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02:03:45 1 Q. And you did that within the limitations that the law places
02:03:48 2 on the FDA once these drugs have been approved and put into the
02:03:53 3 market.

02:03:53 4 Fair statement?

02:03:56 5 A. Yes. We use the tools available to us.

02:04:02 6 Q. You've had pushback by many groups. Many groups have
02:04:05 7 not -- that are also referred to as stakeholders, we have tried
02:04:08 8 to limit opioids and their availability?

02:04:10 9 Fair statement?

02:04:15 10 A. Yes.

02:04:16 11 Q. Yet FDA has continued to take steps over the years to try
02:04:21 12 to make the prescription of and the availability of opioids
02:04:26 13 both available and safer.

02:04:29 14 Fair statement?

02:04:33 15 A. Yes. We try to balance access to med -- the pain and
02:04:39 16 making sure that it's -- the drugs are safe to use, yes.

02:04:45 17 Q. You oversee the marketing of opioids -- when I say you, FDA
02:04:51 18 oversees the marketing of opioids by manufacturers; correct?

02:04:55 19 A. Correct.

02:04:56 20 Q. Does FDA oversee marketing activities of chain pharmacies?

02:05:07 21 A. I don't believe we have regulatory authority over chain
02:05:15 22 pharmacies. I -- but again, I don't -- you know, we regulate
02:05:18 23 the application holder, and the application holder is the
02:05:22 24 manufacturers, and we use the labeling as the basis for what
02:05:25 25 can be marketed, what can be promoted. I don't -- I mean,

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02:05:31 1 that's -- that's my understanding. That's the extent of my
02:05:34 2 knowledge.

02:05:34 3 Q. So FDA -- as you're sitting here today, you're not
02:05:40 4 rendering any opinions as to whether or not these chain
02:05:45 5 pharmacies effectively complied with Section 823 and whether or
02:05:50 6 not they maintained effective control against diversion.

02:05:53 7 Fair statement?

02:05:54 8 A. That -- that's outside the scope of my responsibility and
02:06:00 9 knowledge.

02:06:00 10 Q. So just so it's clear, FDA in its role as a monitoring of
02:06:10 11 opioids and benzodiazapines and must relaxers and combined
02:06:15 12 prescriptions of those that you were asked about before, that
02:06:16 13 does not include any monitoring as it relates to whether or not
02:06:19 14 these chain pharmacies maintained effective control against
02:06:24 15 diversion of those controlled substances.

02:06:28 16 Fair statement?

02:06:30 17 A. Yes. To my knowledge, that's a fair statement.

02:06:34 18 Q. You were asked questions by counsel, within the scope of
02:06:38 19 FDA's approval and, quote, monitoring of opioids,
02:06:44 20 benzodiazapines, and muscle relaxants, and the either
02:06:50 21 individual or combined prescriptions of those, from your
02:06:52 22 knowledge, did FDA, in any way, oversee the requirements set
02:06:57 23 forth in part 1301.71 that registrants shall provide effective
02:07:03 24 controls and procedures to guard against diversion of
02:07:07 25 controlled substances in order to determine whether a

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02:07:10 1 registrant has provided effective controls against diversion?

02:07:15 2 Is that something FDA oversaw as it relates to these
02:07:21 3 chain pharmacies, CVS, Walgreens, Walmart, Rite Aid,
02:07:25 4 Giant Eagle, or any of the other ones?

02:07:28 5 A. I -- I don't believe we enforce these regulations, but I'm
02:07:32 6 not -- I'm not involved in this -- this -- in this area.

02:07:39 7 Q. Whether or not any of these chain pharmacies violated
02:07:45 8 1301.71 by failing to provide effective controls and procedures
02:07:48 9 to guard against diversion as either a distributor or a
02:07:53 10 dispenser, you just don't know whether that occurred.

02:07:57 11 Fair statement?

02:08:03 12 A. I -- I don't know.

02:08:05 13 Q. And you would not be able to give any opinions or any
02:08:08 14 answers as to whether or not there was, in fact, diversion or a
02:08:13 15 failure to comply with 1301.71 as it relates to distributors
02:08:21 16 and dispensers of controlled substances failure to maintain
02:08:26 17 adequate controls as it relates to the opioid epidemic?

02:08:29 18 You don't have an opinion one way or the other;
02:08:33 19 correct?

02:08:33 20 A. I -- I -- I can't speak to this, no.

02:08:35 21 Q. And you would not know whether or not a failure to comply
02:08:39 22 with 1301 was one of the causes of the opioid epidemic?

02:08:44 23 You wouldn't know one way or the other, would you?

02:08:47 24 A. I would not.

02:08:49 25 Q. If a chain pharmacy engaged in some marketing activities as

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02:08:54 1 it relates to opioids, is that something FDA oversees?

02:09:02 2 A. I don't believe so. We oversee the manufacturer.

02:09:05 3 Q. So if there were agreements between a manufacturer and a
02:09:10 4 chain pharmacy to market opioids in some way, you would oversee
02:09:18 5 what the manufacturer did, but you wouldn't -- or FDA wouldn't
02:09:25 6 oversee what the pharmacy, the chain pharmacy did.

02:09:29 7 Fair statement?

02:09:32 8 A. I believe that's correct, but I'm not an expert in that
02:09:36 9 area.

02:09:38 10 Q. I mean, as far as you know is the point -- the point I'm
02:09:41 11 making.

02:09:41 12 As far as you know, you have never seen FDA overseeing
02:09:44 13 how a chain pharmacy may market a -- an opioid?

02:09:49 14 A. Not to my knowledge, no.

02:09:52 15 Q. And through all the time that you've been with FDA, you
02:09:55 16 have never seen FDA oversee how a chain pharmacy dispenses,
02:10:02 17 actually does its job in dispensing opioids.

02:10:06 18 Fair statement?

02:10:10 19 A. Correct. Yes.

02:10:20 20 Q. Some of the pushback you -- you have gotten some -- you,
02:10:24 21 being FDA, has gotten some pushback against overly restricting
02:10:30 22 the availability of opioids from people who need opioids to
02:10:34 23 treat their pain, haven't you?

02:10:37 24 A. Yes, we have.

02:10:39 25 Q. And one of the mandates that you have at FDA is to make

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02:10:44 1 sure that people who need medications, including opioids, have
02:10:48 2 access to those medications consistent with your risk/benefit
02:10:54 3 analysis; right?

02:10:56 4 A. That's correct.

02:10:58 5 Q. And so FDA has been very reluctant to put hard limits on
02:11:05 6 opioids because of the fear that it would unduly restrict the
02:11:16 7 individualized treatment of patients who may need opioids to
02:11:19 8 treat their pain?

02:11:20 9 A. That's correct.

02:11:20 10 Q. And rather than have a one-size-fits-all restriction on how
02:11:26 11 opioids can be used, FDA has concluded that the better course
02:11:33 12 is to allow doctors to be able to make individual therapeutic
02:11:40 13 determinations in deciding how to treat pain, or to treat their
02:11:43 14 patients generally?

02:11:46 15 A. That's correct.

02:11:48 16 Q. Mr. Shkolnik also asked you some questions -- actually, a
02:11:53 17 lot of questions -- about who, in the big universe out there,
02:12:01 18 FDA regulates -- and one of the questions was with whether or
02:12:07 19 not FDA oversees physicians.

02:12:09 20 Do you remember that series of questions, but that one
02:12:13 21 in particular?

02:12:15 22 A. Yes, I do.

02:12:19 23 Q. What FDA does do, and I think maybe you referred to this a
02:12:23 24 little bit in your answer about REMS, it does collect
02:12:27 25 information about what's happening to opioids out in the market

—Toiga (By Video Deposition)—

02:12:32 1 when it's assessing the public health impact of opioids,
02:12:37 2 doesn't it?

02:12:39 3 A. Yes. Our statistic -- we gather our information from our
02:12:43 4 assessments on REMS.

02:12:45 5 Q. And, in fact, at least some of the REMS covering opioids
02:12:53 6 tried to implement a program to provide education to
02:12:56 7 prescribers and healthcare practitioners; right?

02:13:02 8 A. Yes. Correct.

02:13:04 9 Q. So FDA did put in place programs to assist doctors and
02:13:12 10 other prescribers in making their therapeutic determinations
02:13:17 11 about when and how to prescribe opioids?

02:13:21 12 A. FDA, through the REMS, mandated sponsors to develop
02:13:30 13 continuing education programs using our FDA blueprint.

02:13:37 14 Q. And although you don't oversee doctors and regulate them
02:13:42 15 directly, you do oversee the process by which the labeling for
02:13:50 16 the drugs the doctors may prescribe is created and formulated;
02:13:55 17 right?

02:13:57 18 A. Yes, we do.

02:13:58 19 Q. And when you see something post-approval that suggests that
02:14:05 20 the prescribing guidelines in those materials should be
02:14:10 21 altered, you alter them and make them available to prescribers?

02:14:15 22 A. Yes, we do.

02:14:23 23 Q. And you also collect information about how opioids are
02:14:36 24 being used once they've been approved and evaluate those in
02:14:44 25 connection with, for example, submissions to the advisory

—Toiga (By Video Deposition)—

02:14:49 1 committees?

02:14:50 2 A. Yes, we do.

02:14:58 3 MR. DELINSKY: And, Your Honor, I believe that's
02:15:00 4 concludes the deposition.

02:15:02 5 THE COURT: All right. Let's go on the headphones for
02:15:04 6 a minute.

02:15:05 7 (Proceedings at sidebar.)

02:15:14 8 THE COURT: All right. It's only 2:15 -- only 2:15.
02:15:20 9 Are there any other depositions we can play from the
02:15:23 10 defense?

02:15:25 11 MR. MAJORAS: We do not have -- Your Honor,
02:15:27 12 John Majoras. We do not have any more finalized at this point
02:15:31 13 in time. We expect more as the week continues.

02:15:34 14 THE COURT: And I take it you don't have any live
02:15:36 15 witnesses or witnesses by video?

02:15:41 16 MR. MAJORAS: No, sir. This was the hole we talked
02:15:44 17 about earlier in terms of the GE witness -- Giant Eagle witness
02:15:47 18 that was expected.

02:15:49 19 THE COURT: All right. Well, I will very reluctantly
02:15:53 20 recess the jury for the day. We'll spend some time -- I'm
02:15:57 21 going to finalize the exhibits with the prior witnesses, and I
02:16:02 22 mean, if there are any other holes like this, I'm going to just
02:16:05 23 charge the time to the defendants. It's -- we had talked about
02:16:10 24 this. It was unexpected Mr. Chunderlik wouldn't testify, but
02:16:15 25 the defendants are now on notice, it's their case, and we're

—Toiga (By Video Deposition)—

02:16:18 1 going to go through with full days until defendants' case is
02:16:22 2 done.

02:16:22 3 Is that clear to everyone?

02:16:23 4 MR. MAJORAS: We absolutely understand, Your Honor.

02:16:27 5 MR. DELINSKY: Thank you, Judge.

02:16:28 6 MR. STOFFELMAYR: Thank you, Your Honor.

02:16:28 7 THE COURT: Okay. All right.

02:16:33 8 (In open court at 2:16 p.m.)

02:16:33 9 THE COURT: All right. Ladies and gentlemen, it's
02:16:38 10 always difficult in a trial like this to predict exactly how
02:16:43 11 long certain witnesses are going to take, and no one wants to
02:16:47 12 have people fly in from out of town and sit around, so
02:16:54 13 basically there is not another witness available, either live
02:16:59 14 or by deposition. So we're going to take the rest of the
02:17:02 15 afternoon and deal with some exhibits. There's no reason for
02:17:05 16 you to stick around, so we're going to adjourn you early. I
02:17:10 17 know no one's going to be violently upset. You all have a lot
02:17:13 18 of better things -- or -- rather, other things, not better
02:17:16 19 things, other things do, some personal matters, that's fine.

02:17:21 20 So, again, very important that you not see, read,
02:17:26 21 view, listen to anything on any media about this case or
02:17:30 22 anything remotely concerning it. No independent research,
02:17:34 23 checking anything out. Everything you'll need to know to
02:17:37 24 decide this case you're getting right here.

02:17:39 25 Don't discuss this case with anyone. Again, tell them

—Toiga (By Video Deposition)—

02:17:43 1 this judge is pretty mean and has ordered me not to talk to
02:17:46 2 anyone about it till the case is over, and then we'll pick up
02:17:50 3 tomorrow morning promptly at 9:00 a.m. with the next defense
02:17:53 4 witness.

02:17:53 5 So have a good evening.

02:17:55 6 (Jury excused from courtroom at 2:17 p.m.)

02:18:34 7 THE COURT: All right. Well, why don't we take a
02:18:35 8 short break and then we'll come back and hopefully clean up all
02:18:40 9 the remaining exhibits.

02:18:44 10 MR. WEINBERGER: Your Honor. . .

02:18:53 11 THE COURT: We'll take a short break and. . .

02:18:53 12 (Recess was taken at 2:18 p.m.)

02:36:17 13 (In open court at 2:36 p.m.)

02:36:17 14 COURTROOM DEPUTY: All rise.

02:36:19 15 THE COURT: Everyone can be seated.

02:36:21 16 MR. LANIER: May I introduce to you Ms. Laura
02:36:26 17 Fitzpatrick.

02:36:27 18 THE COURT: Sure. Hello, Miss Fitzpatrick. How do
02:36:30 19 you do?

02:36:30 20 MS. FITZPATRICK: Good morning, Judge Polster. How
02:36:32 21 are you?

02:36:33 22 MR. LANIER: She is in charge of exhibits.

02:36:33 23 THE COURT: I've seen Miss Fitzpatrick working at
02:36:36 24 least as hard as everyone else, so --

02:36:38 25 MR. LANIER: She works harder.

—Toiga (By Video Deposition)—

02:36:41 1 MR. DELINSKY: Yeah, Judge, for the record, she works
02:36:43 2 double as hard as everybody else.

02:36:45 3 MR. LANIER: Like, Your Honor, between her and
02:36:47 4 Ms. Conroy, who is Jane Conroy's daughter --

02:36:47 5 THE COURT: I was wondering. I know your mom, so say
02:36:50 6 hello to her for me.

02:36:51 7 MR. LANIER: Yes. Between those two lawyers and
02:36:53 8 Ms. Fleming here and my daughter Rachel Lanier, they have total
02:37:00 9 control and authority over exhibits.

02:37:00 10 THE COURT: Well, you're lucky to have good people to
02:37:02 11 help you, as I do, so I'd be not good if I were on my own.

02:37:06 12 MR. LANIER: Amen.

02:37:07 13 And so my request is recognizing we've got witnesses
02:37:12 14 tomorrow --

02:37:12 15 THE COURT: Well, they can -- yeah, all right.

02:37:15 16 MR. LANIER: Can Pete and I bail?

02:37:19 17 MS. SWIFT: Your Honor, I told Kaspar he had to stay.

02:37:21 18 THE COURT: Yeah, but I want to make sure -- you may
02:37:23 19 object -- I'm going through exhibits, so I want to make sure
02:37:26 20 that --

02:37:26 21 MR. LANIER: They have full short.

02:37:28 22 THE COURT: They have full authority? Okay.

02:37:31 23 MR. LANIER: They know the case better than I do.

02:37:33 24 THE COURT: I don't know about that, but if they know
02:37:34 25 the exhibits. So, anyway, defendants should know -- you're

—Toiga (By Video Deposition)—

02:37:39 1 fortunate, I had a certain esteemed colleague who had a rule,
02:37:42 2 which you wouldn't find in the Rules of Evidence or the Rules
02:37:46 3 of Criminal Or Civil Procedure called the involuntarily rested
02:37:50 4 rule. If you ran out of witnesses, you were involuntarily
02:37:54 5 rested, and he enforced it.

02:37:56 6 UNIDENTIFIED SPEAKER: Wow.

02:37:58 7 MR. MAJORAS: Your Honor, we would have ended on day
02:38:00 8 one, I think.

02:38:01 9 THE COURT: Well, so -- but things occur, and I
02:38:04 10 understood everyone thought Mr. Chunderlik was testifying and
02:38:07 11 it would have been several hours, so that's understood.

02:38:11 12 MR. MAJORAS: We do appreciate that, Your Honor.

02:38:12 13 THE COURT: All right. So we can go -- we can go in
02:38:19 14 order of the oldest first, so why don't -- why don't we start
02:38:26 15 with Tasha Polster. And we admitted -- I'm trying to -- I
02:38:43 16 think the issue came down to the box of refusals to fill.

02:38:47 17 Are we -- and I put that off. I actually said further
02:38:52 18 briefing on that, so I guess that's --

02:38:56 19 MR. LANIER: Here was our concern on that, having
02:38:59 20 left.

02:39:02 21 THE COURT: Didn't -- Mark, you really disappeared.

02:39:06 22 MS. LANIER: Yeah. Yeah.

02:39:06 23 MS. FITZPATRICK: Judge Polster, may I be excused
02:39:07 24 then?

02:39:08 25 MR. LANIER: No, here is our concern on that, and then

—Toiga (By Video Deposition)—

02:39:10 1 I really will leave.

02:39:13 2 The witness -- and I know nothing except candor, so
02:39:18 3 this is just candor. The witness was asked, do you have a box
02:39:21 4 there, yes, is -- are those the refusals to fill, yes, and did
02:39:30 5 you get them from the store, yes.

02:39:32 6 And then I peppered here on those. I used three, I
02:39:36 7 believe, as examples, but the big issue for me was this is a
02:39:41 8 company that says all of their ducks are in a row and all of
02:39:45 9 their houses in order and they have all these refusals to fill,
02:39:49 10 and yet their policy says every one of them should have stapled
02:39:52 11 to it a target drug good faith refusal to fill checklist that
02:39:57 12 was filled out.

02:39:58 13 MS. SWIFT: That's incorrect, as a matter of fact.

02:40:01 14 THE COURT: That's for argument, and so, you know, the
02:40:03 15 question is is there a problem -- the defendants are offering
02:40:07 16 them all?

02:40:08 17 MS. SWIFT: No, Your Honor.

02:40:09 18 MR. LANIER: No, they don't want to offer them. I
02:40:11 19 want to offer them.

02:40:11 20 MS. SWIFT: And, Your Honor, you already said in the
02:40:13 21 middle of her testimony these are not coming in through her
02:40:15 22 because she testified she did not look at all of them, she had
02:40:18 23 never seen the ones that Mr. Lanier pulled out of the box. You
02:40:22 24 asked me whether I was going to offer them, and I said it was
02:40:25 25 going to depend on how the exam went. She testified she didn't

—Toiga (By Video Deposition)—

02:40:28 1 have personal knowledge, that she hadn't put together the box
02:40:31 2 herself, and I did not offer them.

02:40:34 3 I had planned to offer one of them, the one I talked
02:40:37 4 to her about and asked her about in detail. I understand
02:40:43 5 separate from the box there were two that plaintiffs initially
02:40:46 6 had -- two lit slices that plaintiffs had intended to offer and
02:40:50 7 what I was about to say to Ms. Fitzpatrick was, we will
02:40:54 8 withdraw our one if you will withdraw your two slices. And we
02:40:59 9 do not believe it's appropriate at all for the entire box to
02:41:01 10 come in it through her because she testified she didn't have
02:41:03 11 personal knowledge.

02:41:04 12 MR. LANIER: My concern is, then, why does Ms. Swift
02:41:09 13 indicate is there a box, does it have all of the refusals to
02:41:13 14 fill from these stores if, in fact, the witness did not have
02:41:18 15 knowledge of that fact? And if --

02:41:21 16 MR. SWIFT: It's sort of neither here nor there.

02:41:22 17 MR. LANIER: And to reference a box like that in front
02:41:24 18 of jury and then say, but we don't want the jury to look in the
02:41:27 19 box, to me, is disingenuous.

02:41:27 20 THE COURT: Well, look --

02:41:27 21 [Court reporter clarification.]

02:41:33 22 THE COURT: There will be other Walgreens witnesses,
02:41:34 23 and if --

02:41:35 24 And, Mr. Lanier, if you want to use anything in that
02:41:38 25 box, with any Walgreens witness, you can do that.

—Toiga (By Video Deposition)—

02:41:41 1 MR. LANIER: Fair enough.

02:41:41 2 THE COURT: And, again, you can ask them about that
02:41:46 3 policy and show them -- just pull one out and say, where is the
02:41:49 4 prescription, where is the prescription, but -- but -- since
02:41:54 5 the -- since this witness had nothing to do with assembling the
02:41:59 6 box, she testified she had nothing to do with it, the box
02:42:01 7 doesn't come in.

02:42:02 8 Now, there are -- there are two -- on the plaintiffs'
02:42:11 9 list there are refusal to fill notes, or forms, that have been
02:42:16 10 identified. I don't know if these come from the plaintiff or
02:42:18 11 the defendant.

02:42:18 12 MS. FITZPATRICK: Yes, Your Honor, Laura Fitzpatrick.
02:42:23 13 Those are the two slices, Your Honor, that Ms. Swift
02:42:27 14 was referring to, and I think Ms. Swift correct --

02:42:30 15 THE COURT: If the defendant is withdrawing those,
02:42:32 16 then they're out and the box is out.

02:42:36 17 MS. FITZPATRICK: Well what -- Your Honor,
02:42:37 18 respectfully what I was going to suggest, perhaps, with
02:42:39 19 Ms. Swift is that if plaintiffs at this time are not moving
02:42:41 20 into evidence the entire box, it is very important to
02:42:44 21 plaintiffs that we be allowed to enter into evidence those two.
02:42:47 22 We've been referring to these slices.

02:42:49 23 THE COURT: I have no problem with those two.

02:42:51 24 MS. SWIFT: We object to that, Your Honor.

02:42:52 25 THE COURT: Well, she testified about them.

—Toiga (By Video Deposition)—

02:42:53 1 MR. SWIFT: She specifically testified --

02:42:53 2 MS. FITZPATRICK: She did testify to them.

02:42:55 3 MR. SWIFT: She testified that she had no knowledge to
02:42:56 4 them. One of them, I believe the exact words were, I've never
02:42:59 5 seen this.

02:43:00 6 MS. FITZPATRICK: She did testify, Your Honor.

02:43:01 7 THE COURT: I'm going to let those two in because they
02:43:04 8 were -- they were questioned with them.

02:43:04 9 MS. SWIFT: I believe other defendants also had
02:43:06 10 objections to those, Your Honor.

02:43:07 11 MS. FITZPATRICK: Thank you, Your Honor.

02:43:08 12 MR. DELINSKY: Yes, Your Honor --

02:43:09 13 THE COURT: Another defendants objects?

02:43:11 14 MS. SWIFT: Yes, Your Honor.

02:43:11 15 MR. DELINSKY: Yes, we do, Your Honor.

02:43:13 16 One of the issues here is that on one of those
02:43:15 17 exhibits it was not the subject of any cautions or testimony.
02:43:23 18 An OARRS report was attached. We didn't even have the box in
02:43:26 19 realtime, so we saw it as it flashed up on the screen and it
02:43:29 20 was immediately taken off, and --

02:43:32 21 THE COURT: Let me see these exhibits. All right?
02:43:34 22 I --

02:43:39 23 MS. FITZPATRICK: Your Honor, I believe someone is
02:43:40 24 pulling a copy now of plaintiffs' -- the two plaintiffs plan to
02:43:43 25 offer.

—Toiga (By Video Deposition)—

02:43:43 1 THE COURT: 22946 and Walgreens 2604.00566.

02:43:51 2 MS. SWIFT: That's correct, Your Honor.

02:43:53 3 THE COURT: All right. I'd like to see them.

02:43:55 4 MS. FITZPATRICK: Your Honor, I know -- I apologize.

02:43:58 5 Your Honor, I know at least one of them, I believe,
02:44:00 6 does not attach the OARRS report. It is the one that simply --
02:44:04 7 where they pharmacist said she could not find the refusal to
02:44:07 8 fill -- the refusal to fill folder, but with respect --

02:44:13 9 THE COURT: Well, let me just start with -- all right.
02:44:16 10 22946. All right. I remember this one.

02:45:04 11 MS. FITZPATRICK: Your Honor, if I may, the pharmacies
02:45:07 12 that are listed on 224 -- 22946 that are not Walgreens are no
02:45:16 13 longer parties to this action as of this morning. There are
02:45:20 14 Rite Aid's on here and there are Giant Eagle's.

02:45:21 15 But I'm not sure that Mr. Delinsky has standing to
02:45:23 16 object here given that -- unless my eyes deceive me, I don't
02:45:27 17 see CVS having filled for this particular patient, and I
02:45:31 18 certainly don't see Walmart on here.

02:45:34 19 MR. DELINSKY: Well, I certainly don't mean to object
02:45:37 20 on the --

02:45:38 21 THE COURT: Well, I see CVS at the very -- some CVS
02:45:43 22 stores at the bottom of the -- it says Page 2 of 4. It's a
02:45:48 23 March 19th '09 OARRS report. I see a --

02:45:54 24 MS. FITZPATRICK: 22946?

02:45:55 25 MR. DELINSKY: Um-hmm.

—Toiga (By Video Deposition)—

02:45:56 1 THE COURT: I see CVS at the bottom of what is marked
02:46:00 2 on mine Page 2 of 4.

02:46:04 3 MS. FITZPATRICK: Judge, I'm afraid we may be looking
02:46:06 4 at different documents, although mine is stamped 22946, so I'm
02:46:10 5 not sure what the --

02:46:11 6 THE COURT: So's mine, so -- I'm --

02:46:18 7 MS. SWIFT: For the record --

02:46:19 8 THE COURT: Without the OARRS report, there's nothing
02:46:20 9 on this document. It just says, redacted confidential, so
02:46:25 10 there's nothing -- all this document is is an OARRS report.

02:46:28 11 MS. SWIFT: And just so that it's clear for the
02:46:31 12 record, what Walgreens understand P22946 to be is WAG -- the
02:46:37 13 Bates numbers on that document as we understand it or
02:46:42 14 WAG-MDL-01139001.

02:46:45 15 THE COURT: Right.

02:46:46 16 MS. SWIFT: Through --

02:46:49 17 THE COURT: 0 --

02:46:51 18 MS. SWIFT: 009, I believe, Your Honor. Yeah.

02:46:53 19 THE COURT: Right.

02:46:54 20 MS. SWIFT: That's what we have as -- if plaintiffs
02:46:56 21 have something else, then I'm confused.

02:47:01 22 MS. FITZPATRICK: Here. As soon as Tara is done with
02:47:03 23 this keep, copy, Kate --

02:47:04 24 THE COURT: And all it is is an OARRS report.

02:47:06 25 MS. SWIFT: Correct, Your Honor.

—Toiga (By Video Deposition)—

02:47:09 1 THE COURT: It has -- the cover page is meaningless.
02:47:11 2 It says, redacted confidential PHI. So all there is is an
02:47:16 3 OARRS report. I don't see the -- I don't see the relevance of
02:47:24 4 this OARRS report, so I'm not going to let in 22946.

02:47:30 5 MS. FITZPATRICK: Your Honor, may I be permitted to
02:47:33 6 respond?

02:47:33 7 THE COURT: All right, well --

02:47:37 8 MS. FITZPATRICK: What Mr. Lanier questioned
02:47:38 9 Ms. Polster about and was permitted to question Ms. Polster
02:47:41 10 about in front of the jury was the fact that there were
02:47:43 11 multiple -- as found -- and I apologize, I'm not sure why we
02:47:46 12 have different pages, but on the mine it's 229465, and there
02:47:53 13 are some PHI -- confidential PHI redacted, but what Mr. Lanier
02:47:57 14 went through with Ms. Polster was the fact that although the
02:48:03 15 particular Walgreens store within the counties that this
02:48:07 16 document -- this refusal to fill form was offered for, which by
02:48:12 17 its nature attaches the OARRS report, shows that, in fact,
02:48:16 18 other Walgreens Stores 44094, 44060, 44485 have been filling
02:48:25 19 for this patient, and so the idea --

02:48:30 20 MS. SWIFT: Laura, I don't think we have the same
02:48:31 21 document.

02:48:31 22 THE COURT: All right. I --

02:48:33 23 MS. FITZPATRICK: I can -- here. I have an extra
02:48:34 24 copy.

02:48:35 25 THE COURT: My problem is is that if that's all you're

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02:48:39 1 putting in, then maybe we just excise this and focus on the
02:48:44 2 Walgreens, because it's -- it's --

02:48:47 3 MS. FITZPATRICK: Your Honor, that would be fine with
02:48:48 4 the plaintiffs.

02:48:49 5 THE COURT: -- unintelligible otherwise. And there is
02:48:50 6 a reference to a CVS on my document.

02:48:52 7 MS. FITZPATRICK: And I do see that now, Your Honor.
02:48:54 8 That's on the next page at the top, and plaintiffs would be
02:48:56 9 fine to redact that, because I don't believe that Mr. Lanier
02:48:59 10 questioned Ms. Polster about that portion of this document, so
02:49:02 11 that's --

02:49:03 12 THE COURT: The only reference -- the only meaningful
02:49:05 13 reference for this is that there were other Walgreens stores on
02:49:10 14 the OARRS report.

02:49:11 15 MS. FITZPATRICK: That were filling for this patient.

02:49:12 16 THE COURT: That were filling -- obviously, that's the
02:49:14 17 only reason it would be on the OARRS report, so I --

02:49:16 18 MS. FITZPATRICK: Yes, Your Honor.

02:49:18 19 MS. SWIFT: So if I understand what plaintiffs are
02:49:19 20 suggesting, are you suggesting just Page 5, Laura?

02:49:24 21 MS. FITZPATRICK: I'm suggesting that we would be
02:49:26 22 offering the cover page, that we would be offering the pages 1,
02:49:36 23 2, 3, 4 --

02:49:39 24 THE COURT: Well, why don't we just offer the summary
02:49:43 25 page which is, which is --

—Toiga (By Video Deposition)—

02:49:46 1 MS. FITZPATRICK: -- and 5.

02:49:46 2 THE COURT: That's what she -- that was up on the
02:49:47 3 screen for most of her testimony, which I --

02:49:48 4 MS. SWIFT: Which page are you referring to?

02:49:50 5 THE COURT: 00005.

02:49:53 6 MS. SWIFT: Got it.

02:49:53 7 THE COURT: Which, it says, pharmacies that dispensed
02:49:56 8 prescriptions listed and identifies -- I guess, DDM is a
02:50:00 9 Discount Drug Mart. I don't know what -- oh, a couple Rite
02:50:00 10 Aid's.

02:50:07 11 MS. FITZPATRICK: Your Honor --

02:50:09 12 THE COURT: I don't know what the next one is and then
02:50:10 13 four Walgreens.

02:50:11 14 MS. FITZPATRICK: The only reason I am pressing this
02:50:13 15 issue is because it references the prescriptions listed. I
02:50:16 16 think it may be important to show the two prior pages that list
02:50:20 17 the prescriptions listed because it shows that they're opioids
02:50:24 18 and cocktails. Otherwise, Your Honor, I agree.

02:50:27 19 MS. SWIFT: And we object to that, Your Honor.

02:50:30 20 THE COURT: Well, it's only relevant that it's
02:50:33 21 opioids, okay, otherwise -- I mean, all of these are opioids,
02:50:36 22 so I'll -- I will admit the -- I will admit -- I guess the
02:50:42 23 cover page and then what I'm calling the summary page, which is
02:50:47 24 the document that was really used with her testimony which is
02:50:52 25 Page 5.

—Toiga (By Video Deposition)—

02:50:54 1 MS. SWIFT: Then, Your Honor --

02:50:55 2 MS. FITZPATRICK: Thank you, Your Honor.

02:50:55 3 THE COURT: So let's -- let's -- I'm going to make a
02:50:58 4 note. It's. . .

02:51:10 5 All right. Now let me look at the other one.

02:51:13 6 MS. SWIFT: If I may, Your Honor, if that one is
02:51:15 7 coming in, then Walgreens moves to admit the one that was
02:51:19 8 Number 6 on my list, which is WAG-MDL-2604, pages 897 to 901.
02:51:28 9 It's the refusal to fill that I asked her about in detail
02:51:31 10 during her testimony.

02:51:35 11 MS. FITZPATRICK: Kate, do you have a copy of that
02:51:36 12 just so I can make sure we have a goose gander rule here?

02:51:38 13 MS. SWIFT: I'm afraid I gave it to Judge Polster or
02:51:42 14 else I lost my copy. I apologize, Laura. I'll get you a copy.

02:51:45 15 MS. FITZPATRICK: Your Honor, to the extent that what
02:51:47 16 Ms. Swift is moving into evidence has the same limitations that
02:51:50 17 you imposed with respect to 22946, we will have no objection.

02:51:52 18 THE COURT: Is there a summary page on that? I
02:51:54 19 can't -- your memory is probably better than mine. If there
02:51:57 20 was, then it should come in too.

02:52:29 21 MS. SWIFT: We're getting additional copies of that
02:52:31 22 one, Your Honor, if you wanted to move to the last of the
02:52:33 23 plaintiffs'.

02:52:33 24 THE COURT: All right. Well, let me look at -- 17260,
02:52:37 25 there was testimony about this note.

—Toiga (By Video Deposition)—

02:52:39 1 Do we still have a GFD refusal folder, couldn't find
02:52:45 2 it. And then there's a, you know, this document -- and it also
02:52:52 3 has an OARRS report. I'm trying to see if there's a -- there's
02:52:59 4 no summary page like there was with the other documents.

02:52:59 5 MR. SWIFT: Your Honor --

02:53:03 6 MS. FITZPATRICK: That's right, Your Honor.

02:53:03 7 I'm sorry, Kate. Go ahead.

02:53:05 8 MS. SWIFT: I'm just trying to figure out what the
02:53:06 9 Judge has in his hand. Is that one of the ones I handed you,
02:53:10 10 Your Honor? It may be the one that I'm looking for.

02:53:12 11 Does it say at the bottom, Exhibit 2604?

02:53:14 12 THE COURT: No. This is -- oh, yes. This does say
02:53:18 13 2604.

02:53:19 14 MS. SWIFT: Is it 2604897 to --

02:53:24 15 THE COURT: Well, you handed me -- all right. This
02:53:27 16 may be the confusion.

02:53:28 17 MS. SWIFT: I apologize, Your Honor.

02:53:29 18 THE COURT: You handed me 17260, which was -- which is
02:53:35 19 simply -- all it says is, do we still have a GFD refusal
02:53:41 20 folder, couldn't find it.

02:53:42 21 MS. SWIFT: That is one of -- that is the last of
02:53:44 22 plaintiffs' exhibits.

02:53:44 23 THE COURT: Right. But that's all there is to it.
02:53:47 24 Then you also handed me -- under it was, I think, Walgreens
02:53:52 25 1138860.

—Toiga (By Video Deposition)—

02:53:55 1 MS. FITZPATRICK: Your Honor, all that plaintiffs
02:53:56 2 are -- the second exhibit that plaintiffs are offering is the
02:54:00 3 17260 that you have that you're correct, Your Honor, it is just
02:54:03 4 the one page.

02:54:04 5 THE COURT: All right.

02:54:05 6 MS. FITZPATRICK: And that is all that we're offering
02:54:07 7 at this time.

02:54:07 8 THE COURT: All right. Well, this should come --
02:54:09 9 there was testimony about it.

02:54:10 10 MS. SWIFT: Your Honor, my understanding -- and
02:54:12 11 Ms. Patrick, I'm sure will correct me -- Ms. Fitzpatrick will
02:54:14 12 correct me if I'm wrong, if 17260 and 23 -- I'm sorry -- the
02:54:24 13 last one we were speaking about, the other of the two slices,
02:54:29 14 if those two are coming in, my understanding is that plaintiffs
02:54:31 15 do not object to our introducing 2604, pages 897 to 901, which
02:54:39 16 is the one that we -- that I can't find that we're trying to
02:54:42 17 print copies of. But if there's no objection to it, I don't
02:54:44 18 know that we need the copies.

02:54:45 19 THE COURT: All right.

02:54:46 20 MS. FITZPATRICK: I just need to see the pages to
02:54:46 21 ensure that the restrictions we have are the same restrictions
02:54:48 22 that you have.

02:54:48 23 THE COURT: That may be this. That may be this one.
02:55:01 24 It says 2604.

02:55:01 25 MS. SWIFT: Yes, this is it.

—Toiga (By Video Deposition)—

02:55:03 1 THE COURT: All right. Well, show it to plaintiffs.
02:55:13 2 (Counsel conferring).

02:55:56 3 MS. FITZPATRICK: Your Honor, I think the good news is
02:55:57 4 we just worked it out.

02:55:58 5 THE COURT: All right. So what's coming -- these
02:56:00 6 three documents are coming in?

02:56:03 7 MS. FITZPATRICK: In redacted fashion.

02:56:04 8 THE COURT: All right. Fine.

02:56:05 9 MS. FITZPATRICK: For two of them, Your Honor.

02:56:06 10 THE COURT: Okay.

02:56:08 11 MS. SWIFT: That's correct, Your Honor.

02:56:09 12 THE COURT: All right. We'll just work out the
02:56:11 13 redactions.

02:56:12 14 MS. FITZPATRICK: Yes, Your Honor.

02:56:12 15 THE COURT: All right. So we're. . . all right.

02:56:20 16 So that takes care of the documents with Tasha
02:56:25 17 Polster, so I can cross that off.

02:56:32 18 MS. FITZPATRICK: Kate, don't we need to deal with 27,
02:56:34 19 or do you need to just say we have an agreement?

02:56:36 20 MS. SWIFT: I think we just need to say we have an
02:56:38 21 agreement on the redactions, but let me -- I need to look at
02:56:46 22 68.

02:56:49 23 THE COURT: I lost my list.

02:56:58 24 All right. I've got exhibits used by plaintiffs for
02:57:03 25 Vernazza.

—Toiga (By Video Deposition)—

02:57:05 1 MS. FITZPATRICK: Yes, Your Honor.

02:57:05 2 THE COURT: All right. Are there any objections to
02:57:07 3 these by the defendants?

02:57:09 4 MR. DELINSKY: To only one, Your Honor.

02:57:10 5 THE COURT: All right. Which one?

02:57:11 6 MR. DELINSKY: P10234. This was an e-mail about DEA
02:57:18 7 speaking points and the objections are under --

02:57:22 8 THE COURT: Well, I don't have this on my list.

02:57:24 9 MS. FITZPATRICK: Judge, I believe -- I think
02:57:26 10 Mr. Delinsky did what I do often, which is invert the number.

02:57:29 11 Did you mean 10243?

02:57:32 12 MR. DELINSKY: Is that the --

02:57:32 13 [Court reporter clarification.]

02:57:44 14 MR. DELINSKY: I will take that compliment. It's one
02:57:46 15 of the only times I've ever received that.

02:57:51 16 MS. FITZPATRICK: Your Honor, I believe what
02:57:52 17 Mr. Delinsky is referring to is the last on your list, which is
02:57:55 18 P10245.

02:57:59 19 THE COURT: DEA speaking points?

02:58:00 20 MR. DELINSKY: Correct, Your Honor.

02:58:01 21 MS. FITZPATRICK: Yes, Your Honor.

02:58:02 22 MR. DELINSKY: And the objection is that the witness
02:58:04 23 testified that he did not acknowledge about that document, what
02:58:08 24 was meant in it. The cover -- it was the cover e-mail.

02:58:12 25 MS. FITZPATRICK: Your Honor, this is the --

—Toiga (By Video Deposition)—

02:58:14 1 THE COURT: Can I see the document? I'll make a quick
02:58:19 2 ruling on that.

02:58:23 3 MS. FITZPATRICK: One second, Your Honor.

02:58:24 4 THE COURT: I'm just going to read these. These can
02:58:26 5 come in without objection, 10101, 10121, 10243, 10144, 10180,
02:58:40 6 10179, 10290, 10262, 10299, 10297, and 10198. So the one we're
02:58:55 7 talking about is 10245.

02:58:58 8 MS. FITZPATRICK: Yes -- yes, Your Honor.

02:58:58 9 And my understanding, although maybe I misunderstood,
02:59:01 10 was simply that counsel for CVS was going to be noting their
02:59:05 11 objection for the record, not that we would be arguing this,
02:59:09 12 but if I'm wrong, we -- happy to argue it, but --

02:59:13 13 MR. DELINSKY: No -- no --

02:59:16 14 MS. FITZPATRICK: I believe this is one, like
02:59:19 15 Ms. Fumerton the other day, where it was coming in over their
02:59:22 16 objection.

02:59:22 17 Correct, Eric?

02:59:23 18 MR. DELINSKY: That's correct.

02:59:24 19 MS. FITZPATRICK: Thank you.

02:59:24 20 THE COURT: All right. Well, this comes in over
02:59:26 21 objection.

02:59:26 22 MS. FITZPATRICK: Thank you.

02:59:30 23 THE COURT: All right. Eric, are you offering
02:59:32 24 anything or any of the defendants offering anything with
02:59:35 25 Vernazza?

—Toiga (By Video Deposition)—

02:59:36 1 MR. DELINSKY: I think we did -- did we not read those
02:59:40 2 this morning?

02:59:43 3 THE COURT: I don't think so because I would have it.

02:59:45 4 MR. DELINSKY: Yeah.

02:59:49 5 Your Honor, no, nothing further --

02:59:50 6 THE COURT: Okay.

02:59:50 7 MR. DELINSKY: -- on Mr. Vernazza.

02:59:52 8 THE COURT: All right. Now I've lost my list, and I
02:59:58 9 want to get back to. . .

03:00:06 10 I know we had Nelson. I know we had Keyes. Let
03:00:12 11 me. . .

03:00:14 12 Travassos?

03:00:15 13 MR. DELINSKY: Your Honor, can --

03:00:17 14 THE COURT: Let me just make I've got -- and then we
03:00:24 15 had --

03:00:25 16 Robert, did we get -- did we take care of Caraway
03:00:28 17 documents? Do you have all that?

03:00:30 18 COURTROOM DEPUTY: Yeah. Just one document for
03:00:36 19 Caraway.

03:00:37 20 THE COURT: Okay. And I think the remaining ones we
03:00:47 21 have to cover are Nelson, Nelson's second appearance, his live
03:00:54 22 one. Dr. Keyes, Travassos, and Fraser.

03:00:54 23 MS. FUMERTON: Your Honor --

03:00:54 24 MR. SWIFT: Your Honor, I believe --

03:00:58 25 Oh, go ahead, Tara. Please, go ahead.

—Toiga (By Video Deposition)—

03:00:58 1 MS. FUMERTON: I was going say, I believe we covered
03:01:00 2 Nelson in its entirety.

03:01:01 3 THE COURT: We did? All right.

03:01:02 4 MS. SWIFT: If I may, Your Honor, with respect to the
03:01:04 5 Nelson exhibits, there is one, which is 8068, that
03:01:08 6 Ms. Fitzpatrick and I just worked out a couple of redactions
03:01:11 7 to. I just wanted to make that clear, the redactions as to
03:01:16 8 Walgreens in exhibit Plaintiffs' 8068.

03:01:25 9 MS. FITZPATRICK: To just to be clear, Kate, that is a
03:01:30 10 Nelson exhibit from the deposition play, so not what was dealt
03:01:33 11 with yesterday but what was dealt with --

03:01:36 12 MS. SWIFT: Understood. Thank you.

03:01:38 13 MS. FITZPATRICK: -- a week or so ago?

03:01:38 14 MR. SWIFT: Yeah.

03:01:43 15 MS. FITZPATRICK: So the record is clear.

03:01:43 16 MS. SWIFT: Thank you.

03:01:44 17 THE COURT: Robert, do we have a sheet with Nelson?

03:01:45 18 All right. So we did Nelson. Okay.

03:01:48 19 All right. Anything with Dr. Keyes?

03:01:53 20 MS. FITZPATRICK: No, Your Honor.

03:01:54 21 THE COURT: Anything from the defense with Dr. Keyes?

03:02:07 22 MR. STOFFELMAYR: No. I'm sorry, Your Honor. We have
03:02:09 23 no exhibits we're offering with Dr. Keyes. I apologize.

03:02:12 24 THE COURT: All right. Good. No problem.

03:02:13 25 MS. SWIFT: Thank you.

—Toiga (By Video Deposition)—

03:02:16 1 THE COURT: Travassos we did?

03:02:16 2 UNIDENTIFIED SPEAKER: We did that this morning.

03:02:19 3 MS. FITZPATRICK: Yes, Your Honor, but I believe
03:02:20 4 counsel for CVS may have something to clarify. I'm not exactly
03:02:24 5 sure, but --

03:02:24 6 MR. DELINSKY: Yep. Your Honor, in the spirit of I
03:02:28 7 never should be allowed to handle exhibits, I screwed that up,
03:02:31 8 and Ms. Fitzpatrick was kind enough to let us go back on the
03:02:36 9 record and put some objections to the exhibits plaintiffs are
03:02:38 10 offering on the record.

03:02:39 11 THE COURT: All right. Let me have -- let me have
03:02:41 12 this.

03:02:43 13 MS. FITZPATRICK: But to be clear, Eric, simply this
03:02:45 14 is agreeing to admission over your objection.

03:02:48 15 MR. DELINSKY: Right. And I can just run through the
03:02:50 16 particular ones, Your Honor.

03:02:51 17 THE COURT: Okay.

03:02:53 18 MR. DELINSKY: P06272. This was a slide deck, and the
03:02:57 19 objection is 602, as Ms. Travassos was not on the document,
03:03:02 20 wasn't familiar with it.

03:03:03 21 THE COURT: Wait. Let me -- I'm not even. . . oh, the
03:03:11 22 first one. Okay.

03:03:12 23 MR. DELINSKY: Correct.

03:03:13 24 MS. FITZPATRICK: And, Your Honor, to be clear, I
03:03:15 25 don't believe Mr. Delinsky is asking you to reconsider your

—Toiga (By Video Deposition)—

03:03:16 1 ruling, just noting his objection.

03:03:18 2 THE COURT: All right. So I'm putting in -- 06272
03:03:20 3 comes in over objection.

03:03:21 4 All right. Which other ones?

03:03:23 5 MR. DELINSKY: Your Honor, 06325, I think we have an
03:03:26 6 agreement with the plaintiffs to redact the top e-mail. With
03:03:30 7 that redaction, there's no objection.

03:03:33 8 MS. FITZPATRICK: That is correct.

03:03:35 9 MR. DELINSKY: 0656 --

03:03:36 10 THE COURT: Hold it. I'm not even finding that.

03:03:38 11 MR. DELINSKY: Oh, I'm sorry.

03:03:39 12 THE COURT: 06325. Okay. Redacted. All right.
03:03:44 13 Okay.

03:03:45 14 MR. DELINSKY: 06566. This was an e-mail from field
03:03:51 15 people in Lake County regarding Dr. Demangone. Ms. Travassos
03:03:55 16 was not on the e-mail, wasn't familiar with it, so it's a 602
03:03:59 17 objection for the record.

03:04:00 18 THE COURT: Okay. Over objection that comes in.

03:04:03 19 MR. DELINSKY: I'm going to lump two documents
03:04:07 20 together, Your Honor.

03:04:07 21 THE COURT: Okay.

03:04:08 22 MR. DELINSKY: Actually, I'm going to lump four
03:04:11 23 together in the interests of time because the objections are
03:04:13 24 the same.

03:04:14 25 THE COURT: All right.

—Toiga (By Video Deposition)—

03:04:14 1 MR. DELINSKY: 6510, 6457, 8402, and 6612. Those were
03:04:36 2 e-mails and attachments about programs and alerts that were
03:04:42 3 explored and not implemented, and we've asserted to Your Honor
03:04:46 4 prior objections to those based on Rule 402, 404.

03:04:52 5 THE COURT: Okay. So those come in over objection.

03:04:54 6 MR. DELINSKY: Only one more, Your Honor, and that is
03:04:57 7 06672.

03:05:01 8 THE COURT: Mid-year performance check-in.

03:05:04 9 MR. DELINSKY: Correct. And it is -- there are --
03:05:06 10 again, same objections, 402 and 403 objections to the excerpts
03:05:11 11 that discusses the programs being explored for possible
03:05:16 12 implementation.

03:05:16 13 THE COURT: All right. So that comes in over
03:05:18 14 objection.

03:05:18 15 MR. DELINSKY: Okay. And, Your Honor, I think that
03:05:20 16 because that's a personnel file, we will --

03:05:22 17 THE COURT: Yeah. That should be redacted.

03:05:23 18 MR. DELINSKY: Yes.

03:05:24 19 THE COURT: I don't want any personal identifying data
03:05:28 20 in there.

03:05:30 21 MS. FITZPATRICK: Yes, Your Honor, and that's not
03:05:31 22 going to be a problem.

03:05:32 23 THE COURT: Okay. All right. Are --

03:05:41 24 MR. DELINSKY: Thank you, Your Honor.

03:05:44 25 THE COURT: All right. So we took care of -- let me

—Toiga (By Video Deposition)—

03:05:49 1 just -- I got to make sure we're -- oh.

03:06:03 2 MS. FITZPATRICK: Your Honor, I believe that would
03:06:04 3 only leave Kim Fraser, and I believe plaintiffs are only
03:06:08 4 offering one exhibit. If defendants would like to wait until
03:06:11 5 tomorrow to deal with that, we can, but --

03:06:13 6 THE COURT: We can deal with it now then we won't
03:06:15 7 forget.

03:06:16 8 We took care of Alexander? I think so, but I want to
03:06:20 9 make sure we did. Everyone else was caught up.

03:06:24 10 MS. FITZPATRICK: Yes, Your Honor, plaintiffs did not
03:06:25 11 offer any exhibits with Alexander.

03:06:27 12 THE COURT: All right. Then what -- what -- any
03:06:29 13 documents with Ms. Fraser?

03:06:31 14 MS. FITZPATRICK: Yes, Your Honor. Plaintiffs would
03:06:33 15 offer P04511, the e-mail with the opioid task force related to
03:06:42 16 the opioid task force.

03:06:46 17 THE COURT: Any objection to that?

03:06:47 18 MR. DELINSKY: Well, Your Honor, I'd like to tee up
03:06:49 19 our exhibit because they're different years of the same thing.

03:06:53 20 THE COURT: Well, it seems to me they both should come
03:06:55 21 in. One was a 2018 and one was a 2019.

03:06:59 22 MS. FITZPATRICK: Your Honor, I think that's probably
03:07:01 23 fine, but if you don't mind, I would like to just take a look
03:07:04 24 at it, and I apologize.

03:07:06 25 THE COURT: That's what was represented to the

—Toiga (By Video Deposition)—

03:07:07 1 witness, and she identified 2019 is the updated version of the
03:07:11 2 2018.

03:07:17 3 MS. FITZPATRICK: Your Honor, no objection to this
03:07:19 4 exhibit.

03:07:19 5 THE COURT: All right. So they both come in.

03:07:21 6 MS. FITZPATRICK: Yes, Your Honor.

03:07:21 7 THE COURT: Just which -- for the record, one -- the
03:07:25 8 2018 is 04511?

03:07:27 9 MR. DELINSKY: Correct.

03:07:28 10 THE COURT: And what's the 2019, Eric?

03:07:30 11 MS. FITZPATRICK: CVS --

03:07:32 12 May I?

03:07:32 13 -- CVS-MDL-04963, Your Honor.

03:07:36 14 THE COURT: Okay. Those both come in.

03:07:39 15 MS. FITZPATRICK: Thank you, Judge.

03:07:41 16 THE COURT: All right. Then any documents with
03:07:48 17 Ms. Toiga?

03:07:50 18 MR. DELINSKY: Your Honor, could we -- that is a very
03:07:52 19 good question, and I think we will have documents, but can
03:07:55 20 we --

03:07:55 21 THE COURT: Well, why don't you confer over the
03:07:58 22 evening and see if you can come to some agreement --

03:08:00 23 MR. DELINSKY: Okay.

03:08:00 24 THE COURT: -- as so what comes in with her.

03:08:03 25 MR. DELINSKY: Will do.

—Toiga (By Video Deposition)—

03:08:04 1 THE COURT: And I think that -- so -- I think that
03:08:08 2 concludes all the plaintiffs' exhibits, so that's good. We've
03:08:11 3 got that done.

03:08:12 4 MS. FITZPATRICK: Thank you, Your Honor. And thank
03:08:13 5 you for your patience with this.

03:08:15 6 THE COURT: All right. Sure. All right. Well, you
03:08:17 7 know, I've learned, I would -- you know, had long cases as a --
03:08:20 8 as a lawyer and as a judge, and if you let things go too long,
03:08:25 9 then it's impossible to deal with them in an intelligent way,
03:08:30 10 so this is better.

03:08:32 11 All right. Just for everyone's -- who -- who do we
03:08:36 12 expect for tomorrow?

03:08:39 13 MS. SWIFT: Tomorrow we have George Pavlich,
03:08:41 14 Your Honor. He'll be testifying remotely.

03:08:43 15 THE COURT: George Pavlich?

03:08:45 16 MS. SWIFT: P-a-v -- as in Victor -- l-i-c-h.

03:08:48 17 THE COURT: Okay. And who is he with?

03:08:50 18 MS. SWIFT: He's a former board of pharmacy agent for
03:08:54 19 Trumbull County.

03:08:55 20 THE COURT: Ohio Board of Pharmacy?

03:08:56 21 MS. SWIFT: Correct.

03:08:57 22 THE COURT: Okay. And he's remote. Okay.

03:08:59 23 MS. SWIFT: Yes. And then after that we'll have
03:09:01 24 Dr. Wailes, W-a-i-l-e-s, who is an expert.

03:09:06 25 THE COURT: Okay. And you expect those two to take

—Toiga (By Video Deposition)—

03:09:11 1 the full day?

03:09:12 2 MS. SWIFT: It might, and if it doesn't, we'll have a
03:09:15 3 deposition to play.

03:09:15 4 THE COURT: Okay. Very good.

03:09:17 5 MS. FITZPATRICK: Kate, if you know, will that be
03:09:22 6 Ashley or Harper Adilla?

03:09:24 7 MS. SWIFT: I'm not sure.

03:09:27 8 MS. FITZPATRICK: Can I count on it being at least one
03:09:28 9 of the two?

03:09:28 10 MR. SWIFT: I think so, yes.

03:09:28 11 MR. DELINSKY: One of the two. Which one, we don't
03:09:29 12 know.

03:09:29 13 THE COURT: I know Ms. Ashley is a DEA person. Who is
03:09:33 14 the other one?

03:09:33 15 MS. SWIFT: She is also a DEA person.

03:09:36 16 MR. DELINSKY: It's Harper Adilla, A-d-i-l-l-a.

03:09:39 17 MS. FITZPATRICK: And those would be after the two
03:09:40 18 live witnesses, correct?

03:09:42 19 MS. SWIFT: Correct.

03:09:43 20 MS. FITZPATRICK: Thanks.

03:09:44 21 MR. MAJORAS: If needed.

03:09:44 22 THE COURT: Okay. All right.

03:09:46 23 MR. MAJORAS: If needed.

03:09:46 24 MS. FITZPATRICK: Yes. Thank you. Thanks.

03:09:50 25 And then do we know yet for Friday?

—Toiga (By Video Deposition)—

03:09:54 1 MR. MAJORAS: I disclosed to Mr. Lanier that it's
03:09:57 2 Dr. Murphy, and then again depositions if needed.

03:10:02 3 THE COURT: Dr. Murphy.

03:10:05 4 MS. FITZPATRICK: Okay. Do we -- okay.

03:10:06 5 We can talk offline about if there are depositions ready.

03:10:11 6 MR. DELINSKY: We may use depositions to fill the
03:10:12 7 time.

03:10:12 8 MS. FITZPATRICK: Yeah. Yeah. Understand.

03:10:13 9 Understood. Just trying to get you what you need.

03:10:15 10 THE COURT: Okay. So, again, it's important for a
03:10:16 11 whole lot of reasons to get full days in because I want the
03:10:20 12 jury to keep focused. I don't want them to think it's, you know,
03:10:25 13 just, you know, hit or miss, but also I -- I've scheduled this
03:10:28 14 in a certain way so it gets done at a certain time, well before
03:10:34 15 Thanksgiving, and that's important. So the jury has plenty of
03:10:38 16 time to deliberate before Thanksgiving.

03:10:41 17 MR. MAJORAS: We're well on that pace, Your Honor.

03:10:43 18 THE COURT: Okay. All right. Anything else that
03:10:45 19 anyone thinks we ought to bring up?

03:10:47 20 MS. SWIFT: Not for us, Your Honor.

03:10:48 21 Thank you very much.

03:10:48 22 MR. DELINSKY: Thank you, Your Honor. Nothing
03:10:48 23 further.

03:10:50 24 MS. FITZPATRICK: Thank you.

03:10:50 25 MR. MAJORAS: I have an off-the-record question when

—Toiga (By Video Deposition)—

03:10:54 1 we finish.

03:10:54 2 THE COURT: And the CVS folks can move into that table
03:10:57 3 so you can see better.

03:10:58 4 MR. DELINSKY: We've already started moving.

03:10:59 5 THE COURT: Oh, I see your name tag. Good. All
03:11:02 6 right.

03:11:02 7 MR. DELINSKY: We've been waiting.

03:11:03 8 THE COURT: Well, I'm sorry that you were sort of --
03:11:07 9 sort of blocked. There was no --

03:11:09 10 MR. DELINSKY: That's okay. Yeah.

03:11:11 11 THE COURT: Just so everyone knows, I had 16 tables
03:11:16 12 when in my Amish beard case because I had 16 defendants, so I
03:11:21 13 needed -- obviously there was just a -- one -- one lawyer with
03:11:25 14 each defendant, but I had 16 separate tables. They were
03:11:31 15 smaller tables and they were like this (indicating).

03:11:34 16 MR. STOFFELMAYR: This is before COVID.

03:11:36 17 THE COURT: Yes.

03:11:38 18 MR. MAJORAS: Did that cause COVID, Your Honor?

03:11:39 19 THE COURT: Well before COVID, obviously.

03:11:41 20 Okay.

03:11:44 21 MS. FITZPATRICK: Your Honor, plaintiffs are happy to
03:11:45 22 see CVS front and center for the jury now.

03:11:48 23 THE COURT: Oh, I -- oh, I might as well -- this is
03:11:51 24 what I have for the time for this week.

03:11:55 25 For Monday, I had 2.5 hours for the plaintiffs, 3.25

—Toiga (By Video Deposition)—

03:12:00 1 for the defense.

03:12:03 2 Yesterday I had 2.75 for the plaintiffs, 3.25 for
03:12:08 3 defendants.

03:12:10 4 Today was a short day, just 2 and a half hours for the
03:12:13 5 plaintiffs and .75 for the defendants.

03:12:18 6 MR. MAJORAS: Your Honor, I am still in discussion
03:12:19 7 with Mr. Lanier and Mr. Weinberger about the clawback time on
03:12:23 8 the Nelson redone --

03:12:24 9 THE COURT: All right.

03:12:24 10 MR. MAJORAS: -- but I -- we should have an agreement
03:12:26 11 or teed up to you soon.

03:12:27 12 THE COURT: All right. If it turns out that, you
03:12:31 13 know, a significant number of those documents were -- had been
03:12:36 14 produced in a timely way, then that should be charged to the
03:12:40 15 plaintiffs for that proportionate share.

03:12:42 16 MR. MAJORAS: We hope to have an agreement on that.

03:12:44 17 THE COURT: Okay.

03:12:44 18 MR. DELINSKY: Your Honor, do you have your totals
03:12:46 19 readily available? If not, we have them from before.

03:12:49 20 THE COURT: I -- yes. Yes. You want to look at -- we
03:12:51 21 don't need all this on the record, right?

03:12:54 22 Do you have a question on a particular day or what?

03:12:57 23 MR. DELINSKY: No, I mean just the grand total. We
03:12:59 24 can check because you've been giving us updates.

03:13:02 25 THE COURT: Well, I can tell you that through --

03:13:05 1 through last week it was 49.25 for the plaintiffs and 24 for
03:13:10 2 the defendants. So that was through Friday. Now if there's
03:13:18 3 going to be -- that's through Friday.

03:13:21 4 MR. DELINSKY: Okay.

03:13:21 5 THE COURT: And then I just gave you Monday, Tuesday
03:13:24 6 and Wednesday. If it turns out that there's some adjustment
03:13:27 7 because of Nelson, then the Monday -- Monday hours could change
03:13:30 8 a bit.

03:13:32 9 MR. DELINSKY: Thank you, Your Honor.

03:13:41 10 THE COURT: Okey-doke. Then I guess we're adjourned.

03:13:44 11 MS. FITZPATRICK: Thank you, Your Honor.

03:13:46 12 MS. SWIFT: Thank you, Your Honor.

03:13:47 13 (Proceedings adjourned at 3:13 p.m.)

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C E R T I F I C A T E

16 I certify that the foregoing is a correct transcript
17 of the record of proceedings in the above-entitled matter
prepared from my stenotype notes.

18

/s/ Heather K. Newman
HEATHER K. NEWMAN, RMR, CRR

10-27-2021
DATE

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